REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. 02-314**
	)	
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming	)	

To: The Commission

SUPPLEMENTAL REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. IN SUPPORT OF CONSOLIDATED APPLICATION FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN COLORADO, IDAHO, IOWA, MONTANA, NEBRASKA, NORTH DAKOTA, UTAH, WASHINGTON AND WYOMING

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TABLE OF CONTENTS

Attachments	Tab
Reply Declaration of Lori A. Simpson: Checklist Item 2 (Unbundled Network Elements)	1
Reply Declaration of Karen A. Stewart: Checklist Item 4 (Line Sharing)	2
Reply Declaration of Jason Best: Checklist Item 4 (Mechanized Loop Testing)	3
Reply Declaration of Derek Breeling: Checklist Item 4 (Mechanized Loop Testing)	4
Reply Declaration of Mary Pat Cheshier: Checklist Item 4 (Mechanized Loop Testing)	5
Reply Declaration of Jeff Leege: Checklist Item 4 (Mechanized Loop Testing)	6
Reply Declaration of Nancy Lubamersky: Checklist Item 4 (Mechanized Loop Testing)	7
Reply Declaration of Kerri Sibert: Checklist Item 4 (Mechanized Loop Testing)	8
Reply Declaration of Kathie Simpson: Checklist Item 4 (Mechanized Loop Testing)	9
Reply Declaration of Donovan Trevarro: Checklist Item 4 (Mechanized Loop Testing)	10
Reply Declaration of Keith White: Checklist Item 4 (Mechanized Loop Testing)	11
Reply Declaration of Judith L. Brunsting: Qwest LD Corp.	12
Reply Declaration of Marie E. Schwartz: Section 272 Compliance by the BOC	13
Joint Reply Declaration of Jerrold L. Thompson and Thomas R. Freeberg: Pricing	14
Reply Declaration of Michael G. Williams: Performance Measures Results	15
Reply Declaration of Larry Brotherson: Public Interest	16
Reply Declaration of Lynn MV Notarianni and Christie L. Doherty: Checklist Item 2 (OSS)	17
Reply Declaration of Dana L. Filip: Checklist Item 2 (Change Management)	18

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Pursuant to the Commission's *Public Notice*, DA 02-2438 (September 30, 2002), Qwest Communications International Inc. hereby submits its Reply Comments in the captioned proceeding. 1/

1/ In its Supplemental Brief, Qwest adopted and incorporated by reference its original applications, and all of its other submissions to the record in support of those applications, in each of WC Docket Nos. 02-148 ("Qwest I") and 02-189 ("Qwest II"). For convenience, the instant proceeding is referred to as "Qwest III." As in the opening Brief, citations herein to Qwest's *ex parte* submissions in the Qwest I and Qwest II dockets refer to the "date/identifier" field in the chronological and thematic indices of *ex parte* submissions and other filings attached to Qwest's Supplemental Brief. Unless otherwise noted, defined terms used herein have the meanings assigned in Qwest's Supplemental Brief and in the Qwest I and Qwest II applications.

These Supplemental Reply Comments are 73 pages long. Qwest is responding in its Supplemental Reply Comments to comments filed by 11 parties, all nine State Authorities, and the U.S. Department of Justice. Accordingly, Qwest respectfully seeks leave to exceed the page limit applicable to this submission.

I. INTRODUCTION AND SUMMARY: GRANT OF QWEST'S APPLICATION IS SUPPORTED BY THE RECORD AND COMMISSION PRECEDENT

The voluminous record amassed in the Qwest I and Qwest II dockets and in each of the underlying state Section 271 proceedings demonstrates that significant local exchange competition exists in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming. The record also demonstrates that Qwest satisfies all elements of the competitive checklist in each state and that grant of its request for interLATA authority would serve the public interest and promote the pro-competitive objectives of the Act.

As Qwest explained in its Supplemental Brief, near the end of the statutory review period in the Qwest I proceeding, the Staff raised questions regarding Qwest's compliance with Section 272(b)(2) in light of the pending restatement of QCII's financial statements for prior periods. When it became apparent that Qwest would not be able to resolve the Staff's questions on this point within the 90-day timeframe for the Qwest I application, and because those questions also pertained to the Qwest II application, Qwest withdrew both applications on September 10, 2002.

In its refiled application, Qwest has provided information regarding Qwest LD Corp. ("QLDC"), which will provide interLATA services in the application states following grant. As demonstrated in Qwest's Supplemental Brief and supporting declarations, and as amplified in these Supplemental Reply Comments and declarations, the creation of QLDC eliminates any need to resolve the legal issues regarding QCC accounts raised in connection with the prior applications. The record clearly establishes that Qwest will provide in-region interLATA services in accordance with Section 272.

Commenters opposed to Qwest's interLATA reentry seek to distract attention from Qwest's satisfactory record of compliance with Section 271 by renewing precisely the same

types of arguments that have been considered, and rejected, by the State Authorities in the course of their Section 271 proceedings, and by the Department of Justice in its multiple evaluations of Qwest's satisfaction of Section 271. Once again, however, commenters' objections fail to overcome Qwest's showing of Section 271 compliance or to establish any basis under the Act or Commission precedent for denial of Qwest's application.

Commenters' repetitive, increasingly strident rhetoric must not be allowed to obscure the fundamental fact that Qwest has satisfied the requirements of Section 271 in full. The record here reflects several years of collaborative problem-solving, the expenditure of hundreds of millions of dollars, and the work of thousands of people -- by Qwest, CLECs, and the State Authorities -- to open local markets to competition. Under the ongoing supervision of the State Authorities, CLECs are using new wholesale products and systems to challenge Qwest successfully in the marketplace. The record establishes that these tools will be available to meet future demand as CLECs continue to expand their operations in the Qwest region. And the record demonstrates that the QPAP provides a robust mechanism to ensure that Qwest continues to meet its statutory obligations following grant of interLATA authority.

The State Authorities agree. As in the Qwest I and Qwest II proceedings, each of the nine application states has concluded that Qwest satisfies the requirements of Section 271. 2/

2/ *See* Qwest III Comments of the Public Utilities Commission of the State of Colorado (Oct. 15, 2002) (affirming prior endorsement of Qwest's application for interLATA authority); Qwest III Written Consultation of the Idaho Public Utilities Commission (Oct. 15, 2002) (same); Qwest III Iowa Utilities Board Written Consultation Regarding Qwest Communications International, Inc. (Oct. 15, 2002) (same); Qwest III Comments of the Nebraska Public Service Commission (Oct. 15, 2002) (same); Qwest III Supplemental Comments of the North Dakota Public Service Commission (Oct. 15, 2002) (same); Qwest III Comments of the Public Service Commission of Utah (Oct. 15, 2002) (same); Qwest III Comments of the Wyoming Public Service Commission (Oct. 15, 2002) (same, reiterating "its strong support" for Qwest's application).

For its part, the Department of Justice finds that "the record has improved" with respect to certain issues "about which it previously expressed reservations . . . ." DOJ Qwest III Evaluation at 4. Accordingly, the Department "recommends approval of Qwest's application," subject to this Commission's independent evaluation. *Id.* at 10. These nine State Authorities and the Department of Justice have it exactly right. Now this Commission should clear the way for consumers in each of the application states to begin reaping the benefits of more serious

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The Montana Public Service Commission found that Qwest satisfies each of the 14 points on the Section 271(c) checklist. *See* Qwest II Montana PSC Evaluation. Nonetheless, the MPSC now recommends that the Commission reach a negative public interest finding with respect to the Montana portion of this application because Qwest declined to initiate a full "revenue requirements and rate design case" to address the MPSC's concerns about the possibility that Qwest's intrastate access charges impose a price squeeze with regard to intrastate toll rates. Qwest III Comments of the Montana Public Service Commission (Oct. 25, 2002).

Nothing in the Act conditions the grant of Section 271 authorization on a state commission's support for the application. A state commission's opposition to an application should not be preclusive where, as here, its sole reason for withholding its endorsement is demonstrably erroneous as a matter of law. In the words of dissenting Montana PSC Commissioner Bob Rowe, "[t]he Montana Commission's action is an abuse of the Section 271 process . . . ." *Id.* at 5 (Separate Statement and Dissent of Commissioner Rowe); *see generally* Qwest III Thompson/Freeberg Reply Decl. ¶¶ 18-22. As Commissioner Rowe points out, there is no nexus between intrastate access rates and the critical "public interest" issue implicated by Section 271 – the openness of the *local* market. And the FCC has held that there should be no link between Section 271 approval and access charge reform. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, 9598 ¶¶ 19-20 (2000) ("*Supplemental Order Clarification*"); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 ¶ 13 (1996) *Access Charge Reform,* First Report and Order, 12 FCC Rcd 15982 ¶ 279 (1997), *aff'd*, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 548 (8th Cir. 1998). To create such a link would impermissibly "extend the terms used in the competitive checklist." 47 U.S.C. § 271(d)(4). Moreover, there is no intrastate access charge-induced price squeeze in Montana, and Montana law and PSC regulation ensure that one cannot develop. *See* Qwest II Montana Consumer Counsel Reply Comments at 3-5. In any event, Qwest has proposed the commencement of an intrastate access charge collaborative rulemaking proceeding before the Montana PSC that would address any such problem more directly than a Qwest rate case.

interexchange competition and the corollary benefits of a more vibrant local exchange marketplace.

In these Supplemental Reply Comments, Qwest addresses the principal issues raised by opponents of its refiled application. First, Qwest responds to allegations that QLDC is not a legitimate Section 272 affiliate. Qwest demonstrates -- again -- that, quite to the contrary, Qwest LD Corp. is a *bona fide* company that will, following grant, provide interexchange service in full compliance with Section 272. Second, Qwest responds to certain commenters' continued overblown criticism of its OSS and CMP, as well as issues relating to commercial performance. Finally, Qwest addresses certain additional matters, including the state of local competition, checklist compliance generally, matters regarding "unfiled agreements," and AT&T's allegations regarding Qwest's actions during an FCC site visit at the Qwest CLEC Coordination Center in Omaha, Nebraska. As will be shown below, none of these matters (or any of the other issues raised by commenters) provides any ground for denial of Qwest's application for interLATA authority.

Qwest's refiled application demonstrates that local markets in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming are "irreversibly open to competition," *New York 271 Order*, 15 FCC Rcd at 4164 ¶ 429, and that Qwest has fully satisfied the requirements of Section 271. Accordingly, Qwest's Application should be granted promptly.

II. QWEST HAS SHOWN THAT THE REQUESTED AUTHORIZATION WILL BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 272

A. Background

The record, including the declarations of Marie Schwartz and Judith Brunsting, 3/ establishes that in-region interLATA services will be provided in accordance with Section 272. Qwest has over five years of experience complying with Section 272, in its relationships with the originally designated affiliate, Qwest Long Distance Inc. (formerly U S WEST Long Distance, Inc.) 4/; Qwest Communications Corporation; and QLDC, the affiliate that will provide in-region interLATA services upon grant of this application.

QLDC is, contrary to the unsupported suggestions of AT&T, a fully functional company that will be the sole provider of in-region interLATA services upon grant of this application. It is indeed a small company; because it was formed to provide in-region services, it naturally does not provide any services at this time. Therefore its activities to date have been preparatory, and the size of its staff reflects those activities. Qwest III Brunsting Reply Decl. ¶¶ 2-3.

3/ *See* Declaration of Marie E. Schwartz, "Compliance with Section 272 by the BOC," Qwest I Att. 5 App. A ("Qwest I Schwartz Decl."); Declaration of Judith L. Brunsting, "Compliance with Section 272 by the 272 Affiliate", Qwest I Att. 5 App. A ("Qwest I Brunsting Decl."); Declaration of Marie E. Schwartz, "Compliance with Section 272 by the BOC," Qwest II Att. 5 App. A ("Qwest II Schwartz Decl."); Declaration of Judith L. Brunsting, "Compliance with Section 272 by the 272 Affiliate," Qwest II Att. 5 App. A ("Qwest II Brunsting Decl."); Supplemental Declaration of Marie E. Schwartz, "Compliance with Section 272 by the BOC," Qwest III Att. 5 App. A ("Schwartz Supplemental Decl."); Declaration of Judith L. Brunsting, "Compliance with Section 272 by Qwest LD Corp.," Qwest III Att. 5 App. A ("Brunsting QLDC Decl."); Reply Declaration of Marie E. Schwartz, "Section 272 Compliance by the BOC," Att. 13 hereto ("Qwest III Schwartz Reply Decl."); Reply Declaration of Judith L. Brunsting, "Section 272 Compliance by Qwest LD Corp.," Att. 12 hereto ("Qwest III Brunsting Reply Decl.").

4/ Qwest Long Distance Inc. was dissolved in November 2001.

As discussed in the application, QLDC intends to commence operations as a switchless reseller of interLATA services. The Commission has recognized that resale is a good way of introducing new competitors into retail markets because the startup costs can be low. 5/ QLDC has recently entered into a resale contract with WorldCom pursuant to which WorldCom will be the underlying facilities-based carrier. Qwest III Brunsting Reply Decl. ¶ 2. Naturally, once QLDC enters this market, it will hire additional employees in order to ramp up its operations.

AT&T observes that QLDC has "far fewer contracts with QC than did QCC, which was a viable, stand-alone company," and alleges that "the obvious answer is that another Qwest affiliate is providing those services to QLDC." AT&T Qwest III Comments at 20-21. In fact, some of the services that QC has provided to QCC are for out-of-region QCC operations that are not applicable to QLDC, such as Bill Printing & Processing and Correspondence Center; while other services will not be necessary to carry out QLDC's current business plan to operate as a switchless reseller, such as Access to Mineral Lab Facility or Wholesale Sales & Service. Qwest III Brunsting Reply Decl. ¶ 4.

QLDC is also in the process of obtaining any authorizations from state telecommunications regulatory agencies that are necessary for the provision of intrastate interLATA service in the application states. QLDC expects to have obtained any necessary

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5/ *See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Report and Order, 60 FCC 2d 261 ¶ 87 (1976). In the very case that AT&T cites to suggest that QLDC could have no ability to "provide" in-region long distance (*see* AT&T Qwest III Comments at 18-20), the FCC found that engaging in activities typically undertaken by a reseller is probative evidence of being a "provider" of in-region interLATA service. *See AT&T Corp. v. Ameritech Corp.,* Memorandum Opinion and Order, 13 FCC Rcd 21438 ¶ 37 (1998) (subsequent history omitted).

authorizations by the time this Commission grants Section 271 authority and will comply with applicable state regulatory requirements. *See* Qwest III Brunsting Reply Decl. ¶ 5.

In sum, QLDC is a distinct entity with a different business plan and books that are not subject to past accounting irregularities. Of course, it is a subsidiary of QCII, as the Act contemplates. QLDC has directors and officers in common with other Qwest companies (but not with QC), and those human resources are part of what makes QLDC a viable entity. QLDC also has hired some employees who were formerly employed by QCC. All QLDC employees have received 272 training and signed an acknowledgement form stating that they understood the training. *See* Brunsting QLDC Decl. ¶¶ 47-50 & Exhibits JLB-QLDC-14, -16; Qwest III Brunsting Reply Decl. ¶ 10. All QLDC employees had also received 272 training in their prior positions. *See* AT&T Qwest III Comments at 21; Qwest III Brunsting Reply Decl. ¶ 10.

QLDC therefore stands ready to provide the services for which authorization is sought. As shown in the record and discussed below, QLDC also stands ready to provide those services in accordance with Section 272. 6/

AT&T makes much of its point that "mere 'paper promises'" do not provide a sufficient basis for a finding that the requested authorization will be carried out in accordance with Section 272. *See, e.g.*, AT&T Qwest III Comments at 14. Of course, Qwest has provided far more than that. The declarations of Ms. Schwartz and Ms. Brunsting provide detailed evidence of mechanisms, procedures, and controls that QC and QLDC have in place to ensure compliance with Section 272. Furthermore, AT&T's insistence that Qwest's competitive entry

6/ Many of AT&T's and other parties' comments on Section 272 were raised in substantially the same form as in the prior proceedings, and Qwest stands on its responses that are already in the record. *See, e.g.*, AT&T Qwest III Comments at 27-28 (significance of KPMG LLP's 2001 review of QC-QCC transactions); *id.* at 38 (alleged sharing of BOC confidential information); *id.* at 39-40 (compliance with Section 272(g) joint-marketing restrictions).

be deferred until some indeterminate period during which QLDC can develop an operational record for AT&T to review is inconsistent with the Act, and lacks any support in any prior Commission decisions.

As a threshold matter, it is important to recognize that Section 271 requires that the Commission find that "the requested authorization *will be carried out* in accordance with the requirements of section 272." 47 U.S.C. § 271(d)(3)(B) (emphasis added). Obviously, BOCs will have no prior operational history of in-region interLATA service. Thus, as the Commission has repeatedly recognized, the inquiry is necessarily forward-looking. This contrasts easily with the "present compliance" standard relied upon by AT&T, *see* AT&T Qwest III Comments at 23, which applies only to checklist items. The Commission explicitly distinguished the showing required for Section 272 compliance from the "present compliance" requirement in the very paragraph cited by AT&T:

> We note, however, that section 271(d)(3) requires that the BOC demonstrate that its "requested [in-region, interLATA] authorization *will be carried out* in accordance with the requirements of section 272." 47 U.S.C. § 271(d)(3) (emphasis added). As explained below, this is, in essence, a predictive judgment regarding the future behavior of the BOC. In making this determination, we will look to past and present behavior of the BOC as the best indicator of whether the BOC will carry out the requested authorization in compliance with the requirements of section 272.

Michigan 271 Order, 12 FCC Rcd at 20573 ¶ 55 n.111.

It is therefore clear from precedent as well as from common sense that, because the inquiry is a "predictive judgment," past and present behavior is only an "indicator"; furthermore, the indicator is the behavior of the BOC, not the 272 affiliate. 7/ Thus, contrary to

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7/ *See, e.g.*, *New Hampshire/Delaware 271 Order*, Appendix F, ¶ 69 (quoting *New York 271 Order*, 15 FCC Rcd at 4153 ¶ 402) (emphasis added); *see also Second Louisiana 271 Order*, 13 FCC Rcd at 20785 ¶ 321; *Michigan 271 Order*, 12 FCC Rcd at 20725 ¶ 347. Of course, if the

AT&T's insistence, the Commission has repeatedly endorsed Section 272 showings based upon commitments that a BOC knows and understands the relevant provision and commits that the grant of authority "will be carried out" in accordance therewith. 8/

The net effect of AT&T's argument would be that a BOC could not gain competitive entry into the interLATA market without some period of apparently "*years*" of going through the motions with a nonfunctional 272 affiliate — whether or not, as here, it has already opened its local markets to competition. *See* AT&T Qwest III Comments at 29 (emphasis in original). This anticompetitive argument finds no support in any of the Commission's decisions. Indeed, the Commission has acknowledged the possibility that a BOC "may reorganize, merge, or otherwise change the form of [its 272 affiliate] or create or acquire additional interexchange subsidiaries" *after* the BOC files its application, noting only that it would "expect, as [the BOC] represents, that any such subsidiaries designated as section 272 affiliates will meet all of the requirements of section 272 . . . ." *Second Louisiana 271 Order*, 13 FCC Rcd at 20786-87 ¶ 324 (denying application on other grounds). The Commission also has approved other BOC applications involving 272 affiliates that were only beginning to plan

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272 affiliate has been in existence, its record prior to providing such services is certainly relevant to this inquiry. And as noted above, all nine states in these proceedings found QCC to have demonstrated its intention and ability to comply with Section 272 based on the record of compliance by both QCC and its predecessor, Qwest Long Distance Inc. The point here is that the fact that prior history is relevant does not mean that a Section 271 application cannot be granted without the delays necessary to compile such a history.

8/ *See, e.g., Second Louisiana 271 Order*, 13 FCC Rcd at 20789 ¶ 331 (Section 272(b)(4) requirement); *id*. at 20802-03 ¶ 354 (Section 272(e)(3) requirement); *id.* at 20803 ¶ 355 (Section 272(e)(4) requirement); *id*. at 20804-06 ¶¶ 357-360 (Section 272(g)(2) requirement); *First South Carolina 271 Order*, 13 FCC Rcd at 670-71 ¶ 237 (Section 272(g) requirement); *New York 271 Order*, 15 FCC Rcd at 4159-60 ¶ 418 (Section 272(e) requirement); *id*. at 4160 ¶ 419 (Section 272(g)(1) requirement); *Texas 271 Order*, 15 FCC Rcd at 18551 ¶ 402 (Section 272(b)(4) requirement); *id.* at 18556 ¶ 412 (Section 272(e) requirement).

and prepare to offer in-region interLATA services in the future, just as QLDC is now, at the time the BOC filed its 271 application. 9/

Nor has the Commission imposed any requirement of a pre-approval audit or other "test[ing]" 10/ on any such 272 affiliate, regardless of whether it has or has not provided any telecommunications services prior to 271 approval. Indeed, the states have uniformly rejected this same argument from AT&T before, 11/ because the biennial-audit provision of Section 272(d) makes clear that Congress adopted a much more logical approach. While the question at the time of entry is the "predictive judgment" of whether the authorization "will be carried out" in accordance with Section 272 once the affiliate becomes operational, the purpose

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9/ For example, Bell Atlantic had established three Section 272 affiliates, one of which was established to serve the other two after Section 271 approval was granted by building an in-region interLATA telecommunications network. At the time Bell Atlantic filed its New York application, that affiliate had only begun to plan construction of the in-region network and was engaged in no other business. *See New York 271 Order*, 15 FCC Rcd at 4153-54 ¶ 405; Declaration of Stewart Verge, *Application by New York Telephone Company (d/b/a Bell Atlantic -- New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. For Authorization to Provide In-Region, InterLATA Services in New York*, Sept. 21, 1999, ¶¶ 1, 8-13, filed as App. A, Vol. I, Tab 6, to Bell Atlantic Application; *see also Texas 271 Order*, 15 FCC Rcd at 18549-50 ¶ 398 (at the time the Commission issued its decision granting Section 271 approval, the Section 272 affiliate conducted no business aside from the company's calling card operations).

10/ AT&T Qwest III Comments at 28. AT&T makes much of the fact, referred to by Professor Holder, that such an audit is necessary under the federal securities laws before QCII can file its annual *financial statements*. But as noted below, Congress adopted a different approach to promote competitive entry under Section 272 — a demonstration prior to entry that the authorization "will be carried out" in accordance therewith, coupled with a *post-operational audit* every two years thereafter.

11/ In the multistate proceedings, the facilitator rejected the notion that Section 272 requires pre-approval "audited operating results" of the kind that AT&T seeks here (*see* AT&T Qwest III Comments, Holder Decl. ¶ 13), stating "that the 'biennial audits' contemplated under section 272(d)(1) do not begin until after market entry under §271. . . . Biennial audits, for example, will have to examine the much-expanded relationships between BOCs and their affiliates after those affiliates enter new markets." *Multistate Facilitator Report on General Terms and Conditions, Section 272 & Track A* at 55. AT&T filed no exceptions on this point.

of the biennial audit is to determine *thereafter* whether the BOC "*has complied*" with Section 272's requirements. 47 U.S.C. § 272(d)(1) (emphasis added). Thus, Congress determined not to require any audit in order to determine eligibility for 271 approval before the 272 affiliate had commenced providing in-region interLATA service. Consistent with that determination, in the *Accounting Safeguards Order* the Commission "require[d] the first audit of BOC compliance with section 272 . . . to begin at the close of the first full year of operations." *Accounting Safeguards Order*, 11 FCC Rcd at 17631 ¶ 203. This requirement reflects a statutory focus on "an operational period," *id.*, that begins "*after* receiving interLATA authorization." 12/

AT&T also alleges that Qwest has somehow "taken the unprecedented action of refusing to permit the relevant state regulatory commissions" to examine QLDC. As shown by the declarations, all of the State Authorities have found that QC and QCC would comply with Section 272, and all of QCC's practices and training for compliance with Section 272 have been overlaid onto QLDC. After the announcement of the formation of QLDC, AT&T filed motions in every state in Qwest's region seeking to reopen the records to force more evidentiary hearings, even though Section 271 does not require the FCC to consult with state agencies on Section 272. Not one state agency has granted AT&T's motion. Eleven states have denied it; nine states

12/ *Texas 271 Order*, 15 FCC Rcd at 18554-55 ¶ 409 (emphasis added); *see also Accounting Safeguards Order*, 11 FCC Rcd at 17631 ¶ 203; Memorandum Opinion and Order, *Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, 17 FCC Rcd 1374, 1374 ¶ 2 (2002) ("Section 272(d) requires a BOC (after receiving section 271 authorization) to obtain a joint Federal/State audit conducted by an independent auditor to determine whether the BOC complies with section 272 and the Commission's implementing regulations."); *New York 271 Order*, 15 FCC Rcd at 4158 ¶ 416 ("[S]ection 272(d) . . requires an independent audit of a BOC's compliance with section 272 after receiving interLATA authorization."); 47 C.F.R. § 53.209(c) (biennial audits are to be performed on the first full year of operations of the BOC's separate affiliate).

expressly 13/ and two others effectively in their October 15 comments filed in this proceeding. 14/

B. QLDC Will Comply with Section 272(b)(2).

Section 272(b)(2) requires that the *Section 272 affiliate* "maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC]." Arguments by some commenters pointing out that QC, the BOC, is presently unable to certify its financial statements are not relevant to compliance with this requirement. QLDC, the 272 affiliate, is a newly formed company whose books and records reflect incorporation, financing, set-up and planning activities. QLDC maintains books, records, and accounts that are separate from those of QC and are maintained in accordance with GAAP. Brunsting QLDC Decl. ¶ 21. The policies and practices related to the accounting transactions currently under review by management and

13/ *See* Order Denying Motion, Colorado Public Utilities Commission, Docket No. 02M-260T, Decision No. C02-1184, (October 16, 2002), at 4; Order No. 29137, Idaho Pub. Utils. Comm'n (Case No. USW-T-00-3) (Oct. 23, 2002), at 6; Notice of Commission Action, In the Matter of the Investigation Into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996 (Montana Pub Serv. Comm'n Oct. 10, 2002); Opinion and Findings, Nebraska Public Service Commission, Application No. C-1830 (October 8, 2002), at 1-2; *New Mexico PRC Final Order on SGAT, Track A and Public Interest* ¶ 199; Order on AT&T's Motion to Reopen, Case No. PU-314-97-193, North Dakota Public Service Commission (October 10, 2002), at p. 2; 44th Supplemental Order, Denying AT&T's Motion to Reopen the Proceeding and Supplement the Record, Washington Utilities and Transportation Commission, Docket Nos. UT-003022, UT-003040 (Sept. 26, 2002) ¶ 1. The decision from Wyoming (October 10, 2002) is an oral ruling and is memorialized in writing in its comments filed in this proceeding on October 15, 2002; the Minnesota Public Utilities Commission issued a unanimous oral decision on October 24.

14/ *See* IUB Qwest III Comments (noting that Iowa Board is unaware of any event since Qwest's initial filing that would alter its prior positive recommendation); PSCU Qwest III Comments (finding that "Qwest has met the legal standards contained in . . . Section 272").

KPMG LLP for potential restatement have not been and are not applied by QLDC. Qwest III Brunsting Reply Decl. ¶ 11.

This is not to say, of course, that QLDC's accounting will be free from error. But that is not the standard of Section 272(b)(2). The relevant question is whether a Section 272 affiliate "has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with section 272." *Texas 271 Order*, 15 FCC Rcd at 18549-50 ¶ 398. And particularly given the priority this matter has necessarily taken with QCII's new management team, QLDC's controls have been reasonably designed to ensure that it maintains its books, records, and accounts in accordance with GAAP permits the Commission to make the predictive judgment required by Section 271.

In short, Qwest has demonstrated that QLDC will be a viable long-distance reseller, that its staff has already been trained and recently retrained in the requirements that will apply to its operations under Section 272, and that neither the Act nor the Commission's rules and prior 271 orders restrict Qwest from demonstrating that it will comply with Section 272 through the creation of such a new entity. AT&T's only remaining response to Qwest's showing of Section 272(b)(2) compliance by QLDC is a pure guilt-by-association argument: that the accounting practices and policies currently under review by QCII "seemingly" still apply throughout all "members of the Qwest corporate family." AT&T Qwest III Comments at 24. This argument takes AT&T well beyond either the language or intent of the *Accounting Safeguards Order*. 15/ But it also fails for two additional reasons.

15/ As Qwest demonstrated in its filings on this issue in connection with its prior applications, that order should be read consistently with the purposes of Section 272 to limit the 272(b)(2) accounting requirements for the Section 272 affiliate to BOC transactions, in symmetry with the correlative requirements for the BOC in Section 272(c)(2). But whether that view would apply to QCC is no longer the issue. To disqualify *QLDC* by reference to past non-

First, the Chief Financial Officer of QCII, Oren Shaffer, has implemented an extensive series of further controls reasonably designed to prevent, detect, and correct any noncompliance with GAAP. 16/ AT&T's entire argument (and its reliance upon Professor Holder) simply disregards these changes. 17/ Mr. Shaffer has devoted significant time and effort to revising QCII's accounting practices. In that process, Mr. Shaffer has required and reviewed regular reports from the Senior Vice President – Accounting and Financial Operations ("SVP") and from KPMG LLP. Under his supervision, the SVP completed a two-month process of reconciliation, involving approximately 4500 individual accounts in QCII's general ledgers, and established a process of ongoing monitoring of its balance-sheet accounts. Mr. Shaffer has also relied upon the retention of approximately 20 experienced consultants in order to ensure the sufficiency of accounting resources to properly account for new transactions, and the creation of a new Projects and Analysis Group responsible for establishing and managing the accuracy of QCII's books, records, and accounts and implementing internal control enhancements. He has overseen the transfer of supervision over accounting functions from business units to the SVP,

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BOC transactions *by QCC, a wholly different Qwest affiliate*, would be supported by neither the language nor the policy of the *Accounting Safeguards Order* (or the Act).

16/ *See* Comments of Qwest Communications International Inc., Qwest I & II *ex parte* 090402d, at 15-16; Qwest I *ex parte* 082602c; Qwest II *ex parte* 082602b.

17/ Professor Holder also notes, in the portion of his declaration repeatedly cited by AT&T, that "Qwest does not claim that it has established and implemented new accounting policies for QLDC that are different than those used by QC, QCC and the rest of the Qwest corporate family and that are known to be flawed." AT&T Qwest III Comments, Holder Decl. para. 17. In fact, the policies and practices referred to by Professor Holder that gave rise to QC's inability to certify its financial statements have been revised such that instances of material noncompliance with GAAP are not continuing. Qwest III Schwartz Reply Decl. ¶ 7. Further, the policies and practices related to the accounting transactions currently under review by management and KPMG LLP for potential restatement have not been and are not applied by QLDC. Qwest III Brunsting Reply Decl. ¶ 11.

the hiring of an experienced Assistant Controller, an increase in staffing in the technical accounting group, and the consolidation of accounting responsibilities for cash, accounts receivable, assets, revenues, and other functions. He has also approved the elevation of the controller function to become the SVP.

Second, as the Reply Declaration of Ms. Brunsting further makes clear, none of the policies and practices related to the accounting transactions currently under review by management and KPMG LLP for potential restatement have been applied by QLDC. Qwest III Brunsting Reply Decl. ¶ 11. This is hardly surprising, for as AT&T itself notes, QLDC has recently been formed for the purpose of preparing to provide service as a switchless reseller. It is a newly formed company whose books and records reflect incorporation, financing, set-up and planning activities. *Id.* Its transactions with third parties have been minimal. Thus, even if AT&T's reliance upon the potential restatement items for QLDC's affiliates had any legal relevance to QLDC under the language and policy of Section 272(b)(2), it would be factually untenable.

C. QLDC Will Comply with Section 272(b)(3).

AT&T repeats many of the flawed arguments it made on this issue in the prior proceedings, and Qwest's responses are in the record. All that is required for compliance with this section's "separate officers, directors, and employees" requirement is that no person serve as an officer, director, or employee of the Section 272 affiliate while simultaneously serving as an officer, director, or employee of the BOC. *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21990-91 ¶ 178. The record shows that there are currently no such overlaps and that mechanisms exist that will prevent such overlaps from occurring. Schwartz Supplemental Decl. ¶¶ 33-39; Brunsting QLDC Decl. ¶¶ 22-24.

Nothing further is necessary to show compliance with this provision. But Qwest has shown that it has taken other steps to separate QLDC's operations from the BOC's. For example, there is no employee of the BOC who reports to any employee of QLDC, nor is there any employee of QLDC who reports to any employee of the BOC. Qwest III Brunsting Reply Decl. ¶ 8. Qwest policies also prohibit loans and transfers of employees and call for employees to be physically separated to the extent feasible. Schwartz Supplemental Decl. ¶¶ 36, 39; Brunsting QLDC Decl. ¶¶ 22d. QLDC employees are, in fact, entirely physically separated from BOC employees. Qwest III Brunsting Reply Decl. ¶ 6. AT&T even criticizes the fact that QLDC employees have the same color on their employee badges that QCC employees display. AT&T Qwest III Comments at 21. The red dot displayed by employees of those two companies serves to identify them as employees of Section 272 affiliates who must, for example, not have access to certain confidential QC information. The same color is used because what matters is that any employee of a Section 272 affiliate is treated in compliance with the requirements of Section 272. The same rule applies to both companies; therefore the same dot is used. Qwest III Brunsting Reply Decl. ¶ 7.

D. QC-QLDC Transactions Will Comply with Section 272(b)(5) and Section 272(c).

Affiliate pricing. Qwest has demonstrated that both QC and QLDC will follow the Commission's affiliate transactions rules, as required by Section 272(b)(5). 18/ AT&T argues that QC and QLDC violate these rules by describing the prices QC posts and makes generally available to interested third parties under Section 272 as "prevailing company prices" ("PCP"). AT&T Qwest III Comments at 33-38.

First, AT&T's claim that QC's reliance on PCP is unprecedented is simply inaccurate. *Id.* at 35-36; *id.,* Selwyn Decl. ¶¶ 13-25. Verizon's BOCs in Delaware, New Jersey, and Pennsylvania similarly use "prevailing market rate" — as opposed to tariffs, fully distributed cost, or fair market value — to price a wide variety of services including billing services, 19/ provision of information concerning end-user customers, 20/ order entry, customer access database, and number administrative data base services, as well as "marketing systems long distance" services. 21/

Second, what matters under the Commission's rule is not *how frequently* one uses "prevailing company price" as opposed to some other method, but whether one uses it *under appropriate circumstances as defined by the Accounting Safeguards Order*. That Order describes two circumstances where the price of a service or asset constitutes a "prevailing company price":

(1) When BOC-affiliate terms for a service are *not* made publicly available pursuant to Section 272, then neither the BOC nor its affiliate may establish prevailing company prices for affiliate transactions *unless* its annual sales to third parties at that price exceed 25% of its total sales. 22/

18/ *See* Schwartz Supplemental Decl. ¶¶ 56-57; Brunsting QLDC Decl. ¶¶ 29-34; *see also Accounting Safeguards Order*, 11 FCC Rcd at 17595-97, 17607-8 ¶¶ 126-128, 147-48.

19/ See http://www.verizonld.com/pdfs/VLDTransactionDetailWebPage1.pdf (providing pricing details for billing services agreement *available at* http://www.verizonld.com/regnotices/detail.cfm?ContractID=1088&OrgID=1).

20/ See http://www.verizonld.com/regnotices/detail.cfm?ContractID=1130&OrgID=1.

21/ See http://www.verizonld.com/regnotices/detail.cfm?ContractID=983.

22/ *Accounting Safeguards Order*, 11 FCC Rcd at 17599-600, 17601 ¶¶ 133-135, 137. The Commission originally adopted a 50% threshold but last year relaxed this requirement by

(2) However, the Commission *does not require* that the BOC or its affiliate meet this 25% threshold when the price must be posted and made available to any third parties who request it under the terms of Sections 272(b)(5) and 272(c)(1). As the Commission stated:

> We do allow one exception to our rule that only a product or service for which annual sales to third parties, measured by quantity sold, exceed 50 percent [now 25%] of total sales of that product or service may be recorded by carriers at prevailing price. Section 272 requires BOCs to charge their section 272 affiliates the same rates as unaffiliated third parties for facilities, services, and information. *Because the rates for services subject to section 272 must be made generally available to both affiliates and third parties, we adopt a rebuttable presumption that these rates represent prevailing company prices.* Accordingly, products and services subject to section 272 need not meet the 50 percent threshold in order for a BOC to record the transaction involving such products and services at prevailing price.

Accounting Safeguards Order, 11 FCC Rcd at 17601 ¶ 137 (emphasis added). Thus, in determining to dispense with the 50 percent (now 25 percent) threshold for transactions between a BOC and its Section 272 affiliate, the Commission plainly relied instead on the posting and nondiscrimination requirements of Section 272 as a substitute protection. In other words, the price for a service that QC provides to its 272 affiliate is a prevailing company price when the BOC must *also* provide this same service to any interested third party at the same price under Section 272(c)(1).

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decreasing the threshold to 25%. Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301 and 80-286, *2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, 16 FCC Rcd 19911, 19949 ¶ 94 (2001) ("*Phase 2 Order*").

AT&T admits that prevailing price treatment applies wherever "the BOC must make the product or service 'generally available' to unaffiliated third parties at the same rates." 23/ And AT&T's consultant, upon whose declaration it relies, makes clear that his quarrel is not really with Qwest. Dr. Selwyn simply believes the Commission is *mistaken* in exempting Section 272 transactions, available to third parties under publicly available rates, from the 25% threshold requirement. He concedes that "[t]he Commission determined that offering these services [subject to Section 272(c)(1)'s nondiscrimination requirement] constitutes a check on pricing policies since 'the rates and services subject to section 272 must be made generally available to third parties.'" And he recognizes that the "[t]he practical result of [its] determination implies that merely offering such services to third parties" is acceptable. 24/

Dr. Selwyn essentially asks the Commission to institute a new requirement effectively requiring some unspecified threshold of actual third-party sales for Section 272 transactions. *Id.* ¶ 14. That request might be the appropriate subject of a rulemaking in which all interested parties would have the opportunity for comment, but not a Section 271 application.

23/ *See* AT&T Qwest III Comments at 35. AT&T argues that Qwest's "joint-marketing services" are *not available* to third parties and claims that Qwest therefore violates the pricing rules by using PCP for joint marketing. *Id.* This allegation is simply incorrect. As AT&T's own consultant recognizes, "Qwest has not . . . posted a work order contracting for joint marketing services by QC for QLDC," and it cannot offer such services until it receives 271 authorization. *See id.,* Selwyn Decl. ¶ 19 & n. 19. Of course, when Qwest does offer joint marketing services to its Section 272 affiliate, it will price them at the higher of fair market value or fully distributed costs, as it is required to do when there is neither a tariff nor a generally available "prevailing company price." But it will not be required to make them available to third parties. 47 U.S.C. § 272(g)(3).

24/ AT&T Qwest III Comments, Selwyn Decl. ¶ 16. Nor does the Commission's prevailing price exception "rende[r] meaningless the FCC's Fully Distributed Cost/Fair Market Value pricing guidelines." *Id.* ¶ 24. These guidelines continue to require an FMV-FDC comparison in those circumstances where there is no PCP — e.g., in affiliate transactions outside the Section 272 context and in Section 272 transactions (such as joint marketing or services provided *by* the 272 affiliate *to* the BOC) that are not covered by the requirement of general availability.

Dr. Selwyn cites no prior precedent for this "actual sales" requirement for Section 272 transactions, and concedes that the FCC's "determination" that publicly available 272 transactions are exempt from the 25% threshold requirement does not embody any such requirement. 25/ The relevant standard for assessing whether QC and QLDC will comply with Section 272(b)(5) arm's-length requirement is whether they have shown a willingness and ability to comply with the FCC pricing rules *as they are*, not as Dr. Selwyn would like them to be.

AT&T's argument is untenable in any event, because it is premised on the unsupported assertion that these services are all unattractive to other carriers. Whether or not AT&T itself would need such services from a third party, there is no reason to believe that billing support services**,** payroll services, or assistance in general ledger processing 26/ would not be desirable for other parties without such internal capabilities. 27/ Nowhere in its discussion of prevailing price does this Commission make prevailing-price treatment dependent on such *speculation* about the attractiveness of such services. On the contrary, the Commission stressed in the *Accounting Safeguards Order* that it wished to set out a "*clear definition* of what

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25/ The passage that Dr. Selwyn misleadingly cites as support for his "actual sales requirement" comes from the section of the *Accounting Safeguards Order* discussing the 50% (now 25%) threshold requirement, which he concedes is inapplicable here. *See id.*, Selwyn Decl. ¶ 20; *Accounting Safeguards Order*, 11 FCC Rcd at 17599-600 ¶¶ 133-135.

26/ *See* Finance Services Work Order, *available at* http://qwest.com/about/policy/docs/QwestLD/documents/WO_FS_QLDC_Amd11_100802.pdf.

27/ The only other example that Dr. Selwyn gives of a service he asserts would be of no interest to others is from the "National Consumer Markets Joint Marketing Planning" work order. Here, too, however, this work order includes a variety of services (all identified on the web site) that there is no reason to believe would not be of interest to carriers generally. These planning activities include "planning sales and promotional functions; developing marketing and customer segmentation plans; [and] developing systems and processes to prepare functional areas such as order entry, correcting orders rejected by the order entry system, reporting, analysis, training delivery and sales compensation." *See* National Consumer Markets Joint

constitutes prevailing price." 28/ To this end, it established the two bright-line tests described above: prices count as prevailing prices (1) where 50% (now 25%) of all sales are sold at that price to unaffiliated third parties or (2) in the case of Section 272 affiliates, where such prices are necessarily available to all unaffiliated third parties under Section 272's nondiscrimination requirement. 29/

As the Commission's pricing hierarchy makes clear, there is thus no need to calculate FDC or FMV, or to compare the two, where there *is* a prevailing company price. A "prevailing company price" is not defined in terms of FDC; it is rather the price "at which a company offers an asset or service to the general public." 30/ Thus, while there is no material impact on the FDC calculations from potential restatement items, contrary to AT&T's

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Marketing Planning work order, *available at* http://qwest.com/about/policy/docs/QwestLD/documents/WO_nbnjmp_092102.pdf.

28/ *Accounting Safeguards Order*, 11 FCC Rcd at 17600 ¶¶ 135 (emphasis added); *Phase 2 Order,* 16 FCC Rcd at 19948-49 ¶ 93.

29/ While a party may rebut the presumption that a price, made generally available under Section 272, is a prevailing price, *see Accounting Safeguards Order*, 11 FCC Rcd at 17601 ¶ 137, AT&T offers no such evidence at all. Indeed, as noted above, Verizon offers similar services (*e.g*, billing services similar to the "billing support services" Qwest offers as part of its Finances Service Work order) at prevailing company price. *See* Qwest-Qwest LD Corp. Finance Services Work Order, available at http://www.qwest.com/about/policy/docs/QwestLD/ documents /WO_FS_QLDC_Amd11 _100802.pdf; Verizon Billing Services Agreement, available at http://www.verizonld.com/regnotices/detail.cfm?ContractID =1088&OrgID=1. Essentially, Dr. Selwyn, who as noted above disagrees with the Commission's *Accounting Safeguards Order*, seeks to change the presumption to one *against* prevailing price treatment by requiring that Qwest prove the appropriateness of its use of prevailing company prices. *See* AT&T Qwest III Comments, Selwyn Decl. ¶ 21.

30/ *Accounting Safeguards Order*, 11 FCC Rcd at 17595-96 ¶ 126; *Phase 2 Order*, 16 FCC Rcd at 19948-49 ¶ 93.

claims, 31/ any error in calculating FDC would not make such a calculated price *any less generally available.* **[***CONFIDENTIAL MATERIAL BEGINS *****

*****CONFIDENTIAL MATERIAL ENDS ***]**

Posting. Section 272(b)(5) also requires that all transactions between the BOC and its Section 272 affiliate be "reduced to writing" and that information about such transactions be made publicly available. AT&T argues that Qwest's postings are less detailed than those of all of the other BOCs because it fails to post its "underlying contracts." AT&T Qwest III Comments at 37. This is the same unfounded argument AT&T made previously about QCC. That erroneous position was rejected by the Multistate Facilitator, to whose decision AT&T took no exception, and by every other state to have considered the matter. Qwest's web postings satisfy the Commission's requirements.

Some other BOC postings approved by the Commission do instruct third parties that the underlying contract is available only at the BOC's offices. 32/ However, QC and QLDC post on the Internet their Master Services Agreement ("MSA"), which contains all of the terms

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31/ As Ms. Schwartz notes, given the accounts impacted and the estimated potential restatement amounts relative to the FDC calculation, the impact if any would be de minimis. Qwest III Schwartz Reply Decl. 6.

32/ *See* generally 272(b)(5) postings at http://www.verizonld.com/regnotices /index.cfm?OrgID=1. AT&T neglects to cite this web site in the footnote it offers to support its allegation that "other regional Bell operating companies have posted the underlying contracts between the separate affiliate and the BOC." *See* AT&T Qwest III Comments at 37 & n. 118.

and conditions generally applicable to *all* services and assets offered by QC to QLDC. 33/ For each specific service or asset the BOC provides to the 272 affiliate, QC and QLDC also create and post on the Internet a specific "work order" or individual agreement that contains *all* of the additional terms and conditions that apply to that particular service or asset. By posting the MSA, each of its specific work orders, and any individual agreement that is separate from the MSA, QC posts the entire contract for each service and asset provided by the BOC to the 272 affiliate. 34/ QC's postings for QLDC are just as detailed as its postings for QCC, which has been found by every state commission to address the matter to comply with Section 272(b)(5). 35/ Indeed, those state commissions to compare QC's posting with those of other

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33/ QC has not actually provided any assets to QLDC. *See* http://www.qwest.com/about/policy/docs/QwestLD/overview.html.

34/ QC also posts a Services Agreement, which will govern all services and assets provided *by* the 272 affiliate *to* the BOC, and will post "task orders" for such specific services and assets, as Qwest did for QCC-provided services and assets, if QLDC provides any services or assets to the BOC. As is true for services provided *by* the BOC, such task orders — considered together with the Services Agreement — will embody the entire contract for every service and asset provided by the 272 affiliate.

35/ *See Multistate Facilitator's Report on Group 5 Issues* at 10, 66-67 (record supports finding that Qwest's postings will be "sufficiently complete and detailed" and finding use of non-disclosure agreement appropriate); *IUB Conditional Statement Regarding 272 Compliance* at 14-17 (finding web site posting sufficiently detailed under Section 272(b)(5)); *Montana PSC Final Report on Section 272 Compliance* at 29-31 (agreeing that "requiring non-disclosure agreement and on-site examinations constitute appropriate means" of releasing such information); *Washington Commission Twenty-Eighth Supplemental Order* ¶¶ 155, 157 (finding web site postings sufficiently detailed); *Nebraska PSC 272 Order* ¶ 15-16 (finding that web postings include all required information); Order Regarding Section 272 Compliance, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, New Mexico Pub. Regulation Comm'n, Utility Case No. 3269, Feb. 13, 2002, ¶¶ 30-31 ("*New Mexico Order*") (finding web postings sufficiently detailed and noting that use of non-disclosure agreement is "consistent with the FCC's general guidance on this issue").

RBOCs found they were comparable in detail to those approved in prior Section 271 proceedings. 36/

The FCC's *Accounting Safeguards Order* does not say, as AT&T insists, that BOCs must post on the Internet *all* of the information on Section 272 transactions that they make available at their headquarters. AT&T Qwest III Comments at 37. Such a rule would have the bizarre consequence that any time BOCs made *confidential* information available to third parties at their headquarters under a non-disclosure agreement, they would have to post precisely the same information on the Internet, effectively destroying its confidentiality. The Commission has never required this result. On the contrary, it specifically recognized that "[w]hile section 272(b)(5) requires BOCs to reduce their transactions to writing and make them 'available for public inspection,' we will continue to protect the confidential information of BOCs, as well as other incumbent local exchange carriers." *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94 ¶ 122. What the Commission actually said was not that a BOC would have to post on the Internet *all* information (even confidential information) that it provides at its offices, but rather that when it did make certain information publicly available on the Internet, such information "must also be made available for public inspection at the principal place of business of the

36/ The New Mexico Commission found, for example, that "Qwest's disclosures generally provide the same level of detail respecting the rates, terms, and conditions of its affiliate transactions that SBC and Verizon provide on their Websites." *New Mexico Order* ¶ 30. The Washington Commission also concluded that Qwest's web site disclosures are "comparable to the scope of information available on the other RBOC websites." *Washington Commission Twenty-Eighth Supplemental Order* at ¶ 155. *See also* Order, *In the Matter of U.S. West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Arizona Corporation Commission, Docket No. T-00000A-97-0238, April 19, 2002, ¶ 78 (finding that "Qwest's postings provide the detail required by the FCC").

BOC." *Id.* This argument is no more plausible now than it was when the Commission first rejected it in the SBC-Texas 271 proceeding. 37/

"Backdating." AT&T characterizes "backdating" — or entering into contracts that have an effective date several days prior to an execution date — as a Section 272(b)(5) violation. *See* AT&T Qwest III Comments at 36. As Dr. Selwyn concedes, this is "a common business practice." 38/ Nor is it inconsistent with the Commission's rules, which expressly allow a BOC a period of ten days after executing a transaction in which to make such a posting. *See Accounting Safeguards Order*, 11 FCC Rcd at 17593-94 ¶ 122. Thus, these rules specifically contemplate making services available to unaffiliated entities *later* than the BOC makes them available to the 272 affiliate. 39/

QLDC's reliance upon QCC's experience. AT&T notes that QLDC "appears to have never paid anything for the numerous controls and systems it identifies as now at its disposal to meet the requirements of section 272." AT&T Qwest III Comments at 17. Of

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37/ *Texas 271 Order*, 15 FCC Rcd at 18553 ¶ 407 (rejecting AT&T's claim that SBC was obliged to provide confidential billing detail and finding that that SBC's method of making such information available only at its office pursuant to a "nondisclosure agreement has not adversely affected [SBC's] ability to comply with section 272(b)(5) to date because all transactions were properly posted on the Internet.").

38/ AT&T Qwest III Comments, Selwyn Decl. ¶ 36 ("back-dating contracts may often be a common business practice").

39/ Nor does this fact raise a 272(c)(1) issue, as AT&T suggests. Section 272(c)(1) simply requires a BOC to "provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions." *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 22000-01 ¶ 202. It does not require the BOC to engage in *any* process of negotiation with third parties for the provision of any services *not already fully governed by the BOC's posted contracts with its 272 affiliate.* Thus, a third party will never be entitled to ask to obtain service with respect to transactions subject to the posting requirements in advance of working out the contract terms: all of those terms will already have been established and published on the Internet.

course, as discussed earlier, QLDC has hired some employees, including Ms. Brunsting, who had been employed by QCC and had developed expertise in compliance with Section 272. To suggest that a new long-distance company may not hire employees who already understand and know how to comply with applicable law is absurd. Nor is there any impermissible cross-subsidy from QLDC's familiarity with the work that QCC has already paid for in planning for joint marketing. The Commission has construed Section 272 to require application of the affiliate transaction rules to transactions between a BOC and a 272 affiliate. *Accounting Safeguards Order*, 11 FCC Rcd at 17558 ¶ 44. And "protecting ratepayers from cross-subsidizing competitive ventures is a primary goal behind all [the] cost allocation and affiliate transaction rules." 40/ Accordingly, a BOC's cross-subsidization of the operations of its 272 affiliate is a legitimate concern under Section 272. But here, QC is not cross-subsidizing QLDC with respect to joint-marketing-planning services. Rather, Qwest is fully complying with Section 272 and the affiliate transaction rules.

First, there is a work order in place between QC and QLDC that properly reflects the present or future provision of these services. Any prospective joint-marketing-planning services that QC provides to QLDC will be billed and accounted for pursuant to that work order. Thus, QC cannot cross-subsidize QLDC on a prospective basis.

Second, QC's past provision of joint-marketing-planning services to QCC was similarly reflected in a work order, posted, accounted for, and billed.

Thus, in all instances — past and present — Qwest applied the FCC's affiliate transaction rules to QC's provision of joint-marketing-planning services. Because QC and its

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40/ *Id.* at 17550 ¶ 24; *see also id.* at 17586 ¶ 107 (noting that the "affiliate transaction rules were designed to protect ratepayers from subsidizing competitive ventures of incumbent local exchange carriers' affiliates").

ratepayers were (and will be) properly compensated for these planning services, there is no cross-subsidy.

Nor does AT&T's suggestion that this is a "chaining transaction" undermine this conclusion. *See* AT&T Qwest III Comments at 31 & n.88. In the *Accounting Safeguards Order*, the Commission determined that "[u]nder the principle of 'chain transactions,' [the] affiliate transaction rules also apply to any transactions between the section 272 affiliate and a nonregulated affiliate of the BOC, such as a services affiliate, that ultimately result in an asset or service being provided to the BOC." 41/ In other words, where a 272 affiliate provides an asset or service to another nonregulated affiliate, which in turn provides the asset or service to the BOC, the affiliate transaction rules apply to the pricing of the transaction between the 272 affiliate and the other nonregulated affiliate. *NYNEX CAM Order*, 3 FCC Rcd at 5981 ¶ 24.*NYNEX CAM Order*, 3 FCC Rcd at 5981 ¶ 24. This is to ensure that regulated carriers cannot use inflated prices for transactions between nonregulated affiliates as a means to inflate the regulated carrier's costs. *See id.* at 5980 ¶ 23.

There is no support for AT&T's suggestion, however, that the affiliate transaction rules apply to any other transactions between nonregulated affiliates — even where the services or assets were originally *provided* (as opposed to ultimately *received*) by the BOC. As noted above, where the BOC provides an asset or service to QCC, the affiliate transaction rules apply to that transaction, and ensure that the BOC (and its ratepayers) are not cross-subsidizing nonregulated activities. Thus, regardless of whether the nonregulated affiliate later provides the

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41/ *Accounting Safeguards Order*, 11 FCC Rcd at 17623 ¶ 183 (citing *In the Matter of NYNEX Tel. Cos. Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, Memorandum Opinion and Order, 3 FCC Rcd 5978 (1988) ("*NYNEX CAM Order*")).

asset or service to a second nonregulated affiliate, it is neither a chaining transaction nor an improper cross-subsidy. 42/

Finally, QLDC's use of the results of the joint-marketing-planning services that QC previously provided to QCC does not otherwise create a situation in which QC has avoided the posting and nondiscrimination requirements of Section 272 through the use of a second, nonregulated affiliate. 43/ Indeed, at all times that QC provided these services, the services were properly posted on the Internet and offered on a nondiscriminatory basis.

III. QWEST'S OSS COMPLIES WITH THE REQUIREMENTS OF SECTION 271

If a consistent theme has emerged in the OSS-related comments filed in this proceeding, it is that, for the most part, CLECs have failed to raise issues that were not already brought to the Commission's attention – and successfully rebutted by Qwest – in the Qwest I and II proceedings. In the few instances in which CLECs raise new issues, they are anecdotal or lack supporting data. The Commission has routinely held that "anecdotal evidence" or "mere unsupported evidence in opposition [to a BOC's application for Section 271 authority] will not suffice." *New York 271 Order* ¶ 50; *Texas 271 Order*, 15 FCC Rcd at 18375 ¶ 50. The comments filed in this proceeding fail to overcome the substantial, unrefuted evidence that Qwest's OSS meets the requirements of Section 271.

42/ The Act and the Commission's rules prohibit only *the BOCs* from subsidizing nonregulated activities; nothing in the Act or the Commission's rules prohibits one nonregulated affiliate from subsidizing the activities of another nonregulated affiliate. *Cf.* 47 U.S.C. § 254(k) (prohibiting a telecommunications carrier from using services that are not competitive to subsidize services that are competitive).

43/ *See New York 271 Order*, 15 FCC Rcd at 4158-59 ¶ 416 & n.1284 (noting concerns raised by AT&T that a BOC might try to "evade its section 272 obligations by chaining transactions through its affiliates").

A. Pre-Ordering

Hardly a single pre-ordering issue was raised with any specificity by more than one CLEC. This alone suggests that, to the extent issues remain regarding pre-ordering, they are minor. Moreover, aspects of Qwest's pre-ordering processes about which CLECs did voice concerns are easily explainable, particularly in light of the overwhelming evidence that Qwest provides nondiscriminatory access to OSS.

1. Loop Qualification Issues

AT&T was the only CLEC to comment with any specificity on Qwest's loop qualification processes. *See* AT&T Qwest III Comments at 51-58, Finnegan/Connolly/Wilson Decl. ¶¶ 21-41. Covad mentions the issue only in passing. *See* Covad Qwest III Comments at 2. As Qwest has demonstrated previously, it handily meets the Commission's requirements for providing loop make-up information to CLECs. *See* Reply Declaration of Lynn MV Notarianni and Christie L. Doherty ("Qwest III OSS Reply Decl.") ¶¶ 17-19. AT&T's comments merely reveal its lack of familiarity with Qwest's loop qualification systems. *See* Qwest III OSS Reply Decl. ¶¶ 21-27, 32 and Exhibit LN-4.

AT&T contends that Qwest does not provide non-discriminatory access to loop qualification information because it does not provide CLECs with direct access to its LFACS database. *See* AT&T Qwest III Comments, Finnegan/Menezes/Wilson Decl. ¶ 22. This is precisely the same claim made by AT&T – and responded to by Qwest – in the Qwest I and II proceedings. *See* Qwest III OSS Reply Decl. ¶ 28. AT&T nevertheless tries to cobble together a new rationale for its claim, arguing in particular that KPMG's work papers from Test 12.7 indicate that Qwest Retail personnel have direct access to LFACS. *See* AT&T Qwest III

Comments, Finnegan/Connolly/Wilson Decl. ¶ 29. This is incorrect; it is belied by KPMG's correction of certain assumptions in the *Final Report*. *See* Qwest III OSS Reply Decl. ¶¶ 29-30.

AT&T also tries to make much of the fact that Qwest's network technicians have access to LFACS for provisioning purposes. But the network engineers who have such access use LFACS for provisioning purposes alone, not to qualify loops in the pre-ordering stages. *See id.* ¶ 31. More importantly, these engineers access LFACS on behalf of *both* CLECs and Qwest Retail as part of provisioning. *See id.* Thus, they do not discriminate against CLECs.

It is worth reiterating that *each of the application states found that Qwest need not provide CLECs with direct access to LFACS*. *See* Qwest III OSS Reply Decl. ¶ 33. AT&T has offered no evidence to call into question the uniform resolution of this issue.

AT&T raises once again the issue of pre-order mechanized loop testing ("MLT"). Qwest addressed the issue of pre-order MLT extensively in the Qwest I and Qwest II proceedings, and, for the Commission's benefit, reiterates its position in the OSS Reply Declaration. See Qwest III OSS Reply Decl. ¶¶ 34-46; see also Qwest II OSS Reply Decl. ¶¶ 43-57. The MLT issue also has been thoroughly examined in state proceedings. 44/ CLECs have argued repeatedly that they need access to pre-order MLT in order to cure deficiencies in Qwest's loop qualification databases. However, each of the application states has found that Qwest's loop qualification offerings are sufficient without a pre-order MLT requirement. Furthermore, this Commission has never suggested that pre-order MLT is a necessary

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44/ As part of these reply comments, Qwest has provided an overview of the states' treatment of the pre-order MLT issue. *See* Reply Declaration of Nancy ("Lubamersky Reply Decl."), Att. 7, Exhibit NL-QCCC-1; *see also* Qwest I Declaration of William M. Campbell, Unbundled Loops, ¶¶ 127-30; Qwest II Declaration of William M. Campbell, Unbundled Loops, ¶¶ 117-20.

component of an ILEC's loop qualification offerings. *See UNE Remand Order*, 15 FCC Rcd at 3885-87 ¶ ¶ 427-31.

AT&T also suggests that Qwest's practice of performing MLTs before it provisions unbundled loops somehow supports the CLECs' position that they should have access to pre-order MLT. Contrary to AT&T's assertion, however, this practice has no relevance to pre-order loop qualification; rather, it involves a post-ordering procedure that generates no loop qualification information that would be of use to CLECs at the pre-ordering stage. *See* Reply Declaration of Mary Pat Cheshier ("Cheshier Reply Decl."), Att. 5, ¶¶ 3-8; Qwest III OSS Reply Decl. ¶¶ 47-50. AT&T's allegation that Qwest performs pre-order MLTs as part of its Retail loop qualification is incorrect. *See* Qwest III OSS Reply Decl. ¶ 44.

In short, AT&T has provided no legitimate reason to find fault with Qwest's loop qualification offerings. There is no discrimination or disparity between the pre-order loop information available to CLECs and that available to Qwest personnel. The states have found that Qwest's loop qualification offerings satisfy Commission requirements without direct access to LFACS and without access to pre-order MLT.

2. Other Pre-Ordering Issues

Only WorldCom raised any other concerns regarding Qwest's pre-ordering processes. But WorldCom's assertions are both overbroad and inaccurate, and fail to demonstrate discriminatory conduct by Qwest. WorldCom claims, for example, that Qwest sometimes returns multiple addresses when WorldCom performs address validation queries. *See* WorldCom Qwest III Comments at 3, Lichtenberg Decl. ¶ 4. But Qwest's OSS returns precisely the same number of addresses regardless of whether the query is submitted by Qwest or a CLEC. *See* Qwest III OSS Reply Decl. ¶ 11. WorldCom also claims that Qwest rejects LSRs if address

validation and CSR pre-ordering queries are not performed. *See*WorldCom Qwest III Comments at 6, Lichtenberg Decl. ¶¶ 5-6. But this occurs only in three very limited scenarios, and WorldCom's reject rate under those scenarios is exceedingly small. *See* Qwest III OSS Reply Decl. ¶¶ 9-10.

WorldCom also overstates the frequency with which Qwest returns multiple CSRs to CLECs. *See* WorldCom Qwest III Comments at 3, Lichtenberg Decl. ¶ 8. Qwest already has presented this Commission with ample evidence that multiple CSRs are returned only in very limited situations, and that the frequency of multiple CSRs is reduced with each successive release of IMA. *See* Qwest III OSS Reply Decl. ¶ 13. In any case, CLECs are fully capable of determining the proper CSR in the few instances in which multiple CSRs are sent. *See id.* ¶ 14. WorldCom's decision to "not accept customer orders" when Qwest returns multiple CSRs clearly is (in addition to being a curious approach to customer service) beyond Qwest's control. *See* WorldCom Qwest III Comments at 3.

WorldCom's claim that Qwest requires CLECs to perform a separate directory listing inquiry to change a customer's directory listing (rather than obtain the information from the LSR) also is without merit. *See* WorldCom Qwest III Comments at 6-7, Lichtenberg Decl. ¶ 4. The Directory Listing User Document, which is publicly available, provides CLECs with clear and concise instruction on how to obtain the directory information necessary for an order from the CSR. Qwest III OSS Reply Decl. ¶ 16. In short, the claims raised by WorldCom and other CLECs in connection with Qwest's pre-ordering processes do nothing to detract from a finding of compliance in this area.

B. Ordering

WorldCom claims that it must wait until Qwest has updated a CSR to reflect the CLEC's ownership of the account before placing a subsequent order to change features for that customer. *See* WorldCom Qwest III Comments at 7. But this is the same claim previously made by WorldCom and rebutted by Qwest; it remains untrue. *See* Qwest III OSS Reply Decl. ¶ 76. Moreover, WorldCom's complaint that Qwest sometimes does not update CSRs for up to five days does not advantage Qwest because the interval for updating CSRs is the same for both Wholesale and Retail accounts. *See id.* ¶ 77. Clearly, there is no discrimination here.

AT&T and WorldCom both complain of high reject rates. *See* AT&T Qwest III Comments at 61, Finnegan/Connolly/Wilson Decl. ¶ 62; WorldCom Qwest III Comments at 9, Lichtenberg Decl. ¶ 12. But AT&T's argument is precisely the same as the one it made – and that Qwest successfully rebutted – in the Qwest I and II proceedings. *See* Qwest III OSS Reply Decl. ¶ 53. For its part, WorldCom cites a two-week period during which it alleges that its reject rates were particularly high. *See* WorldCom Qwest III Comments at 9, Lichtenberg Decl. ¶ 12. But nearly half of WorldCom's rejected orders during this period were for reasons within WorldCom's control, and most of the others could have been avoided had WorldCom performed a pre-order address validation query, as Qwest repeatedly has recommended. *See id.* ¶ 54. WorldCom's claim that CLECs that have been able to achieve low reject rates using Qwest's OSS are aberrational also is without merit. WorldCom Qwest III Comments at 9. Qwest provided examples of at least *seven* CLECs (many with high volumes) that have been able to achieve low reject rates for EDI orders in the Qwest I and II proceedings. *See* Qwest III OSS Reply Decl. ¶ 55.

WorldCom contends that nearly all of its pre-ordering and ordering complaints would effectively disappear if Qwest modified its "Conversion as Specified" processes for migrating end users and permitted conversions using only a "Migration by TN" feature. *See* WorldCom Qwest III Comments at 9. AT&T makes a similar claim. *See* AT&T Qwest III Comments at 59-60, Finnegan/Connolly/Wilson Decl. ¶¶ 45, 48, 50-52. But these changes were appropriately considered by Qwest and the entire CLEC community – and prioritized for release in IMA version 12.0 scheduled for April 2003 – through the defined, documented, and adhered to Change Management Process. *See* Qwest III OSS Reply Decl. ¶ 65.

WorldCom tries to blame Qwest for the fact that other CLECs did not ascribe the same level of importance to these features as WorldCom and thus did not support WorldCom's special request that these features be implemented sooner. *See* Qwest III OSS Reply Decl. ¶ 67; WorldCom Qwest III Comments at 10-11. But Qwest cannot – and does not – control the preferences of CLECs any more than WorldCom. *See* Qwest III OSS Reply Decl. ¶ 67. Qwest attempted to accommodate WorldCom's request in multiple ways; but ultimately it could not – and did not – depart from its defined and documented processes for implementing new features. *See id.* ¶¶ 68-73 . To do otherwise would have violated Change Management Procedures and provided WorldCom with special treatment. *See id*.

The urgency with which WorldCom today characterizes its need for "Conversion as Specified" and "Migration by TN" features comes as a surprise to Qwest. WorldCom was an active participant in the KPMG OSS Test, and, in the course of two full years of testing, never once expressed a desire to use these features. *See id.* ¶ 74. WorldCom states cryptically that it waited until now to pursue these features because it began seriously to consider entering the local market only this year. *See* WorldCom Qwest III Lichtenberg Decl. ¶ 15. But Qwest cannot be

held accountable – or be expected to depart from its clearly-defined processes – for the consequences of WorldCom's "late-in-the-game" decisions.

Notwithstanding the voluminous evidence already in the docket demonstrating that CLECs can integrate pre-order/order data using Qwest's OSS, AT&T and WorldCom nevertheless attempt to disparage Qwest's pre-order/order integration capabilities. WorldCom claims that it has trouble accomplishing pre-order/order integration and that integration with Qwest's OSS is difficult because Qwest uses non-standard fields for features and details at the pre-order stage. *See* WorldCom Qwest III Comments, Lichtenberg Decl. ¶ 13. AT&T makes a similar claim. *See* AT&T Qwest III Comments at 59. But other CLECs have not reported experiencing these problems and have managed to integrate successfully. *See* Qwest III OSS Reply Decl. ¶ 57. The Department of Justice explicitly recognized that, although AT&T (and, by implication, other CLECs) may prefer that Qwest's pre-order data fields be maintained in a particular way, the organization of those fields "does not appear to preclude the full and successful integration of pre-order and order functions for all CLECs." DOJ Qwest II Evaluation at 11. WorldCom's claims regarding parsing for complex orders also is dismissible, as all the relevant information appears on the CSR and can easily be used by CLECs. *See* Qwest III OSS Reply Decl. ¶ 62.

CLEC claims in connection with Qwest's manual service order accuracy meet a similar fate. Qwest filed a considerable volume of data in the Qwest I and II proceedings demonstrating that the few errors it makes when manually processing orders do not affect the ability of CLECs to compete in the marketplace for local service. *See id*. ¶ 78. CLECs such as Eschelon have not convincingly disputed this data, and instead have offered only anecdotal evidence of problems in this area. *See* Eschelon Qwest III Comments at 20. These anecdotes

ignore the fact that Qwest's overall region-wide manual service order accuracy for Resale and UNE-P orders improved to 96.98% in September, and that its performance for Unbundled Loops has consistently been at or around 95% since June. *See* Qwest III OSS Reply Decl. ¶ 80. It therefore should come as no surprise that the Department of Justice recently found that "Qwest's data suggests that its current service order accuracy performance is consistent with that of other BOCs whose Section 271 applications have been approved." DOJ Qwest III Evaluation at 6.

As a last resort, CLECs try to discredit Qwest by raising concerns in connection with Qwest's service order accuracy measurements, PO-20 and "Service Order Accuracy via Call Center Data" (formerly known as "OP-5++"). But these concerns fall short of demonstrating non-compliance with Section 271. *See generally* Reply Declaration of Michael G. Williams, Performance Measure Result ("Qwest III Williams Reply Decl."), Att. 15. The remaining ordering-related issues raised by CLECs are relatively few and minor, and likewise do not affect a finding of compliance. *See* Qwest III OSS Decl. ¶¶ 81-100.

C. Provisioning

CLECs have raised very few provisioning-related issues. Eschelon claims that Qwest's process for reporting service-affecting troubles during the first 72 hours following installation is unclear. *See* Eschelon Qwest III Comments at 7-13. But this process was described fully in the Addendum to Qwest's Supplement Brief in this proceeding and, contrary to Eschelon's allegations, does not conflict with an explanation Qwest provided in response to a Change Request submitted last year. *See* Qwest III OSS Reply Decl. ¶¶ 101-104.

WorldCom claims that Qwest "returns completion notices at the end of the day regardless of whether orders have been completed" for line sharing and UNE-P LSRs. *See* WorldCom Qwest III Comments at 15, Lichtenberg Decl. ¶¶ 37-40. With respect to line sharing

LSRs, this is precisely the same argument WorldCom made – and Qwest responded to – previously. *See* Qwest III OSS Reply Decl. ¶ 106. For UNE-P LSRs, WorldCom's comments oversimplify and over-generalize what actually occurs. Service orders are not completed simply because a due date has arrived. Rather, they are completed after a multitude of checks, including a check to ensure that the order has not been coded as a jeopardy. *See id.* ¶ 107. On occasion, Qwest may complete a service order despite a jeopardy status. But preliminary analysis shows that this occurs on less than 0.73% of service orders processed for both Wholesale and Retail. *See id.* Moreover, Qwest plans to implement a solution to minimize these occurrences even further in early 2003. *See id.*

D. Maintenance and Repair

Only two maintenance and repair-related issues were raised in the comments, both by Eschelon, which claims, first, that Qwest closes design trouble tickets with the incorrect cause and disposition code. *See* Eschelon Qwest III Comments at 40. But Qwest's own data show that Qwest accurately codes design services trouble tickets. *See* Qwest III OSS Reply Decl. ¶ 111. For instance, during the week of September 9, 2002, Qwest achieved 97% coding accuracy for total design troubles reported by Eschelon. *See id.* and Reply Exhibit LN-8. Moreover, KPMG affirmed Qwest's ability to accurately handle design trouble tickets during the Third Party Test. *See* Qwest III OSS Reply Decl. ¶ 113. Clearly there is no Section 271 issue here.

Eschelon also alleges that Qwest should have processes in place to provide CLECs with up front notice of M&R charges and to allow CLECs an opportunity to verify and dispute those charges. *See* Eschelon Qwest III Comments at 41. These are the same issues that Eschelon raised – and Qwest responded to – previously. *See* Qwest III OSS Reply Decl. ¶ 115. Qwest does in fact provide CLECs with up front notice of M&R charges for design and non-

design services, s*ee id.* ¶¶ 116-118, and CLECs have multiple opportunities to dispute M&R charges. *See id.* ¶ 119. Once again, there is no Section 271 issue here.

E. Billing

CLECs raise no new billing issues in their comments. Both AT&T and Eschelon voice concerns about Qwest's Wholesale bill accuracy. *See* AT&T Qwest III Comments at 64, Finnegan/Connolly/Wilson Decl. ¶ 107-115; Eschelon Qwest III Comments at 41-44. But those concerns relate to issues that either are in the process of being fixed or are not problems to begin with. They also are belied by Qwest's continued strong performance under BI-3A. *See* Qwest III OSS Reply Decl. ¶¶125-127. Moreover, issues raised by these CLECs do not indicate systemic problems with Qwest's OSS; rather, they are typical of business-to-business relationships, which alone should render them moot. *See Alabama/Kentucky/Mississippi/North Carolina/South Carolina 271 Order* ¶ 179.

WorldCom expresses concern that its end-users may be late- or double-billed. *See* Qwest III WorldCom Comments at 7-8. But Qwest's systems are designed specifically to ensure that double billing does not occur. *See* Qwest III OSS Reply Decl. ¶¶ 131-132. Moreover, late billing is unlikely because any usage that occurred within the CSR interval typically is made available to WorldCom within a similar interval. *See id.*

AT&T complains about bill auditability. Qwest already has described in detail (and repeatedly) how its Wholesale bills are auditable. *See* Qwest III OSS Reply Decl. ¶ 133. Moreover, the Department of Justice recently found that "CLECs' ability to audit their bills electronically is sufficient to support a positive assessment of Qwest's wholesale billing capabilities." *See* DOJ Qwest III Evaluation at 8.

All of the discrepancies in the BOS bill that AT&T points to pertain to issues that Qwest already has disclosed and fixed, or plans to fix by the end of this year. *See* Qwest III OSS Reply Decl. ¶¶ 134-135. Notably, AT&T was the only CLEC to criticize Qwest for its BOS offering. Qwest has worked – and will continue to work – diligently with AT&T to identify and resolve any concerns regarding its BOS bill. But these concerns are not Section 271-affecting. There is no industry standard that suggests that BOS is the proper format for local competition billing; and, even if there were, compliance with industry standards is not required for Section 271 relief. *See Louisiana 271 Order* ¶137; *New York 271 Order* ¶ 88.

Eschelon argues that the DUF does not contain accurate records of switched access MOU. *See* Eschelon Qwest III Comments at 47-53. But Eschelon only last week provided Qwest with details regarding its claim of dropped usage in May, *nearly six months after it allegedly occurred*. *See* Qwest III OSS Reply Decl. ¶ 147. Moreover, the few data that Eschelon provided were woefully incomplete, thereby preventing Qwest from analyzing Eschelon's claims in this limited time period. *See id.* ¶ 147, 149-150. 45/ In any case, KPMG's ROC Test evaluated Qwest's DUF and found that it contains accurate call start and end times. *See id.* ¶ 144.

The remaining CLEC billing-related concerns, such as OneEighty's complaint regarding termination record completeness, were in fact due to errors on the part of the CLEC, not Qwest, and have been resolved. In short, the record shows that Qwest's Wholesale bills comply fully with the Commission's requirements that Qwest provide complete, accurate, and auditable bills to CLECs.

45/ Qwest is continuing to work with Eschelon and its consultant to investigate its allegations.

IV. QWEST'S CHANGE MANAGEMENT PROCESS SATISFIES SECTION 271

As shown by the record developed in Qwest I and II, Qwest has satisfied each of the seven change management requirements identified by the FCC under Section 271. 46/ Nothing in the comments here alters this conclusion. The Department of Justice also has found that Qwest has satisfied these requirements. *See* DOJ Qwest I Evaluation ¶¶ 25-31.

As detailed in the Qwest I CMP Declaration, Qwest already had in place and implemented at the time of filing its first application a comprehensive, forward-looking, and detailed change management plan that was the result of a collaborative Qwest/CLEC change management redesign process begun over a year ago. The CMP redesign process is now concluded and the change management plan has been finalized in every detail. Reply Declaration of Dana L. Filip ("Qwest III CMP Reply Decl."), Att. 18, ¶¶ 3-5; Reply Exh. DLF-1 ("CMP Framework").

Other than incorporating by reference prior comments, none of the comments filed in Qwest III challenge the adequacy of Qwest's CMP itself. AT&T points to its prior allegations that Qwest had not demonstrated a pattern of compliance with the CMP. AT&T Qwest III Comments at 50 n.168. The Qwest I and Qwest II CMP Declarations demonstrated a strong pattern of compliance over time with the redesigned CMP, a pattern that continues to be

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46/ *See Alabama/Kentucky/Mississippi/North Carolina/South Carolina 271 Order*, App. F, ¶¶ 40-42 (identify seven Section 271 criteria for change management). In the Change Management Declarations, Qwest showed that (1) its CMP information is clearly organized and accessible; (2) competing carriers have substantial input into the design and operation of the CMP; (3) the CMP has a procedure for timely dispute resolution, and (4) it has shown a pattern of compliance over time. *See* Qwest I CMP Decl. ¶¶ 121-172; Qwest II CMP Decl. ¶¶121-172. In the OSS Declarations, Qwest demonstrated (1) the adequacy of the technical assistance it provides to CLECs in using its OSS; (2) the efficacy of its EDI documentation and (3) the stability of its test environment, which mirrors the production environment. Qwest I OSS Decl. ¶¶ 603-779; Qwest II OSS Decl. ¶¶587-768.

compelling. *See* Qwest I CMP Decl. ¶¶143-172; Qwest II CMP Decl. ¶¶143-172; Qwest II CMP Reply Decl. ¶¶ 14-29; Qwest III CMP Reply Decl. ¶¶ 6-7 and Reply Exh. DLF-2 (CMP Process Improvements Matrix, September 30, 2002).

Although WorldCom does not challenge the adequacy of the CMP in its Qwest III comments, it alleged specific instances of noncompliance with the CMP process in its Qwest II Reply Comments, and cited some others from an Eschelon August 15, 2002 *ex parte* submission in Qwest I. *See* WorldCom Reply Qwest II Comments at 13-15 and Lichtenberg Decl. ¶ 30, *citing* Eschelon August 15, 2002, *ex parte*. Only one of those instances involved any violation of the CMP requirements, and it was isolated and minor in nature. Qwest III CMP Reply Decl. ¶¶8-15.

With respect to the change management criteria not related to the change management process itself, no party has argued at any point in the Qwest Section 271 FCC proceedings that Qwest's technical assistance is inadequate. Now, for the first time, a party (WorldCom) has challenged the efficacy of Qwest's EDI documentation. WorldCom Qwest III Comments at 12-13, Lichtenberg Decl. ¶¶29-32. Qwest has provided an extensive description of its EDI documentation and provided copies of that documentation in Qwest I and again in Qwest II. Qwest I OSS Decl. ¶¶675-680; Qwest II OSS Decl. ¶¶ 659-664. Qwest also provided compelling evidence in the form of commercial data showing that, as of June 1, 2002, a total of 31 individual CLECs had successfully tested and gone into production using EDI interfaces. Qwest II OSS Decl. ¶676 and Confidential Exhibit LN-OSS-70. *See Alabama/Kentucky/ Mississippi/North Carolina/South Carolina 271 Order* ¶188. HP, the pseudo-CLEC in the ROC third party test, also found Qwest's EDI documentation effective. Qwest I OSS Decl. ¶ 696-703.

Against this backdrop, WorldCom challenges the efficacy of Qwest's EDI documentation by offering examples of what it deems to be inconsistencies or missing information in the documentation. WorldCom Qwest III Comments at 12, Lichtenberg Decl. ¶¶ 30. Each of WorldCom's specific examples is addressed in an Exhibit to the OSS Reply Declaration. Qwest III OSS Reply Decl. ¶157 and Reply Exh. LN-12. Most of the difficulties WorldCom experiences can be attributed to its reliance on the LSOG, rather than the Developer Worksheets contained in the EDI Disclosure Document, which Qwest recommends. *Id.* In any case, none of WorldCom's cited instances would prevent a CLEC from successfully building an EDI interface. *Id.*

AT&T and WorldCom argue again in their Qwest III comments that Qwest's stand-alone test environment (SATE) fails to "mirror production." AT&T Qwest III Comments at 64-65 and Finnegan/Connolly/Wilson Decl. ¶¶116-122; WorldCom Qwest III Comments at 16-17 and Lichtenberg Decl. ¶¶41-47. Qwest has already addressed every one of AT&T's arguments in its prior filings in Qwest I and Qwest II. *See* Qwest III OSS Reply Decl. ¶¶162-166. With respect to one of AT&T's arguments – that SATE does not mirror production because it does not include all products that are available in production – Qwest and AT&T have reached a compromise on this impasse issue before the Arizona Corporation Commission. Qwest III OSS Reply Decl. ¶ 166 and Reply Exh. LN-14. That compromise, under which Qwest would add certain products to SATE with a certain threshold volume of transactions, is pending before the ACC Staff. *Id.*

WorldCom advances two new arguments in its Qwest III comments, neither of which has merit. As explained in the Qwest III OSS Reply Declaration, WorldCom's concern about access to directory listing testing functionality (Lichtenberg Decl. ¶¶ 42-44) has been

addressed, effective October 19, 2002, with the introduction of SATE IMA release 11.0, which has that capability (pursuant to CMP prioritization procedures). Qwest III OSS Reply Decl. ¶168. That concern also is addressed by the ability of CLECs to test facility based directory listing (FBDL) in the Interoperability environment for earlier releases without providing their own data. *Id.* WorldCom's other concern, that SATE test scenarios do not contain certain characteristics and include "only the most basic order types," Lichtenberg Decl. ¶45, has been addressed by Qwest's addition of test scenarios on request for CLECs, including WorldCom. Qwest III OSS Reply Decl. ¶ 172. Qwest's policy, to which CLECs have agreed, provides that test scenarios will not be added more generally to the SATE Data Document, or for future releases, unless requested by more than one CLEC, so as not to clutter the Document unnecessarily. *Id.*

In sum, nothing in the Qwest III comments or in the record of Qwest I or II undercuts Qwest's strong showing that it has met all seven of the Section 271 change management criteria.

V. QWEST'S COMMERCIAL PERFORMANCE CONTINUES TO SATISFY THE REQUIREMENTS OF SECTION 271

The overwhelming weight of evidence demonstrates that Qwest's performance data are accurate and reliable, and that Qwest's commercial performance continues to meet the standards established by the PIDs. Yet AT&T continues to argue that Qwest's performance data are inaccurate. AT&T Qwest III Comments at 66. This generalized claim, which AT&T admits simply echoes what it "explained in *Qwest I* and *Qwest II*," *id*, Finnegan Decl. ¶ 10, offers nothing new to overcome Qwest's showing that its performance "has been scrutinized beyond that experienced by any other BOC," in that two separate third parties found the data reliable,

and two separate third parties validated the results in data reconciliation. Qwest I Reply Comments at 10-15; *see also* Qwest II Reply Comments at 7-12. Qwest already has irrefutably demonstrated that its performance measures and data have undergone even more thorough third-party auditing, internal and external controls, collaborative workshops, data reconciliation, and state oversight, than those of previous successful Section 271 applicants. Qwest I Reply Comments at 10-11.

Moreover, Qwest's commercial performance results continue to reflect that Qwest complies with Section 271, notwithstanding AT&T's vain effort to reinforce previous points through state-by-state review of several measurement results, *see* AT&T Qwest III Comments, Finnegan Decl. ¶¶ 34-122, or the other disparities variously raised by other parties or observable in Qwest's performance. *See* Qwest III Williams Reply Decl. ¶¶ 48-51. Together with the existing record, the additional data provided with the current Application, Qwest III Supplemental Brief, Att. 5, App. D, show Qwest on the whole either sustaining its satisfactory performance or generally improving it. 47/ Qwest continues to meet an impressive 93% to 94% of the standards established in its PIDs. *See* Qwest III Williams Reply Decl. ¶ 48.

With respect to the relative handful of specific issues raised by AT&T and CLECs such as Eschelon, the discussion that follows demonstrates the fallacy of the CLEC allegations that Qwest's performance results are not accurate and reliable. Rather, the Commission should find that Qwest's commercial data are "sufficiently reliable for purposes of . . . section 271

47/ *See also* Qwest III Wyoming PSC Comments at 5 (updated data show "Qwest has, on balance, maintained or improved its overall performance"); Qwest III Idaho PUC Comments at 3 (PUC "reviewed the . . . data included with the revised application [and] "did not find any pattern . . . that would lead to a conclusion that Qwest's overall performance had diminished"); Qwest III Nebraska PSC Comments at 2 (PSC "reviewed Qwest's August performance data" and "[b]ased upon this most recent commercial performance . . . continues to recommend approval of Qwest's 271 application").

analysis," *Georgia/Louisiana 271 Order*, ¶ 20, and that its commercial performance results show that Qwest provides interconnection and access to network elements in compliance with Section 271.

A. Qwest's PO-20 and Order Accuracy-Call Center Measurements are Sufficient to Support a Finding of Compliance with Section 271

Qwest's PO-20 and Order Accuracy-Call Center Service Order Quality measurements of new service quality are anything but "ill-defined, incomplete, and inadequate to show statutory compliance," as claimed by AT&T. 48/ As a preliminary matter, it should be noted that AT&T's challenge rests on the assumption that these measurements must carry the entire burden of demonstrating Qwest's new service quality, while ignoring the broader context that includes Liberty's data reconciliation and the OSS test, which left open only a single limited question regarding manual order-processing quality. 49/ In any event, despite an abundance of evidence reflecting the acceptable quality of Qwest's order accuracy, Qwest elected to provide additional information in the form of PO-20 (percentage of orders without errors, based on evaluation of specified fields on sampled orders) and Order Accuracy-Call Center results (based on CLEC

48/ AT&T Qwest III Comments, Finnegan Decl., ¶ 5. The Order Accuracy-Call Center Service Order Quality measurement, previously referred to as, *inter alia*, "OP-5++," "Service Order Accuracy" or "Service Order Accuracy – via Call Center Data," is referred to hereinafter as the "Order Accuracy-Call Center" measurement.

49/ Conversely, the exceptions AT&T relies upon, AT&T Qwest III Comments, Finnegan Decl. ¶ 5, (referencing Exceptions 3028 and 3043), were closed by KPMG with very good results (97% and 99%, respectively). *See* AT&T Qwest III Comments, Finnegan Decl., Attachments 4 and 5. KPMG identified only one remaining Observation (3110), which did not rise to the level of an exception, because it addressed a single aspect of ordering quality, service intervals (consisting of accuracy of application dates and due dates), not expected to indicate failure of a test requirement. Qwest did not have to pursue this item to closure through further re-testing, because sufficient evidence already existed, through data reconciliation conducted by Liberty Consulting, to demonstrate acceptable order-processing quality, and additional results showed no problems with other aspects of ordering quality. *See* Qwest III Williams Reply Decl. ¶ 8.

calls to Qwest's ISC regarding LSR/service order discrepancies). These measurements confirm that Qwest's order accuracy is very good (93% for Resale/UNE-P POTS and 95% for Unbundled Loops) with respect to ordering fields affecting application date accuracy, due date accuracy, and other fields that could be manually examined in PO-20. 50/ In addition, the Order Accuracy-Call Center data also confirm that the incidence of problems experienced by CLECs related to order accuracy is very small (less than 1%). *Id*. Taken in the context of overall OSS test results, the PO-20 and Order Accuracy-Call Center results focus on the proper dimensions of order quality, while being open for modification in the future, 51/ and they show that Qwest's order processing is reasonably accurate from two separate perspectives – order sampling and CLEC calls to centers. *Id*.

B. Qwest's OP-5 PID Properly and Reasonably Captures New Service Installation Quality

AT&T and Eschelon make a number of claims regarding the efficacy of Qwest PID OP-5 (New Service Installation Quality) and the results reported under that measurement, the central thrust of which is that OP-5 enhances Qwest's performance by improperly excluding troubles. *See generally* Eschelon Qwest III Comments at 8-30; *see also* AT&T Qwest III Comments, at 67. However, Eschelon's and AT&T's claims are belied by the origin and

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50/ Qwest III Williams Reply Decl. ¶ 9. As to Eschelon's claims arising out of its examination of Pending Service Order Notifications ("PSONs"), Eschelon Qwest III Comments at 21-27, Qwest's Addendum to this Application provided the results of a quantitative analysis that demonstrated "PSON to LSR mismatches occurred only on 1.06% of LSRs." Qwest III Supplemental Brief, Add., "Service Order Accuracy," at 7.

51/ Qwest has emphasized its willingness to discuss both measurements further with parties in the context of Long Term PID Administration ("LTPA"). *See* Qwest III Williams Reply Decl. ¶ 9 & Att. 1. To the extent States and CLECs have questions regarding PO-20, they will be addressed in the LTPA, which has already held its first meeting. Service order accuracy will be among the first subjects to be addressed. *See id*. ¶ 11.

evolution of OP-5, *see* Qwest III Williams Reply Decl. ¶¶ 13-14, and both CLECs make a number of incorrect assumptions as well. For example, AT&T and Eschelon both erroneously assert that OP-5 does not capture new service problems reported to the ISC. AT&T Qwest III Comments, Finnegan Decl. ¶¶ 25-27; Eschelon Qwest III Comments at 11. In addition, Eschelon stretches the definition of OP-5 PID beyond the breaking point, claiming it must include all service-affecting troubles regardless of how they are reported to Qwest, and AT&T challenges the reliability of OP-5 using examples that do not address reliability. They also misinterpret OP-5's rules for exclusions. All told, neither the general concerns underlying the AT&T and Eschelon complaints regarding OP-5, nor their specific assertions about that PID, support a finding other than that Qwest complies with Section 271.

The troubles Qwest excludes from OP-5 are proper based on the PID definition. *See* Qwest III Williams Reply Decl. ¶¶ 25-28. Qwest has shown that CLEC calls to the ISC within 72 business hours of service installation generally fall into four categories, 52/ only one of which is eligible for inclusion under OP-5. *See* Qwest III Williams Reply Decl. ¶¶ 25-28. AT&T's and Eschelon's concerns regarding what OP-5 captures are unfounded, given that calls to the ISC reporting problems appropriately resolved by trouble reports in Qwest's repair systems do in fact give rise to trouble reports by the ISC. *See id*. ¶¶ 16-19. Yet AT&T and Eschelon still worry that CLEC calls reporting problems to the ISC will somehow be excluded from OP-5 simply because the call goes to the ISC rather than to a repair center. AT&T Qwest III Comments, Finnegan Decl. ¶ 26. However, when an installation problem attributable to Qwest following new service order completion arises, and a CLEC follows proper reporting procedures – including calling the ISC if a problem occurs in the first 72 hours following

52/ Qwest III Supplemental Brief, Add., "Reporting Service Affecting Troubles" at 1.

installation – Qwest creates a trouble ticket and OP-5 captures the problem. Qwest III Williams Decl. ¶¶ 17. If the problem relates to order accuracy due to LSR/Service Order mismatches rather than provisioning, it appears in Qwest's Order Accuracy-Call Center results. 53/

In addition to its misplaced assumptions, Eschelon makes the unreasonable claim that OP-5 should include all service-affecting troubles without regard to how they are reported. Eschelon Qwest III Comments at 13-14. Eschelon attempts to justify this approach by culling language from OP-5's definition to reach the blanket conclusion that "[i]f the trouble affects service, it should be included in OP-5," then arguing that this standard "applies to all troubles 'received' by Qwest, without stating how received." *Id*. This argument is contrary to the PID negotiated in the ROC collaborative, however, and is at odds with the fact that no other ILEC's measurement corresponding to OP-5 (including those relied upon in Section 271 Applications the FCC has granted), includes every service-affecting trouble, regardless of type or manner reported. 54/

53/ *Id*. Eschelon's supposition that Qwest does not create trouble reports for new installation-related problems called into the ISC or CSIE, which Eschelon bases on Qwest's response to a single Change Request ("CR") in the CMP, *see* Eschelon Qwest III Comments at 10, is in error. Eschelon misinterprets Qwest's response to the CR to mean Qwest failed to follow the process described in the Addendum to this Application. Qwest III Williams Reply Decl. ¶¶ 18-19. In fact, Qwest's process within the first 72 hours after the due date is precisely as described in Qwest's Addendum. Qwest III Supplemental Brief, Add., "Reporting Service Affecting Troubles" at 14-16. The CR cited by Eschelon is no exception. Qwest III Williams Reply Decl. ¶ 18.

54/ *See* Qwest III Williams Decl. ¶ 20. Eschelon's concern that subsequent trouble tickets resulting from tagging activities at the customer's serving terminal, or demarcation ("DEMARC"), are not captured in OP-5 are misplaced. *See* Eschelon Qwest III Comments at 27-30. Under the PID, such subsequent trouble reports should not result in an eligible trouble report for OP-5 reporting purposes. As explained in detail elsewhere, *see* Qwest III Williams Reply Decl. at 37-40, if the Qwest technician identifies a defective cable or cable pair while performing DEMARC tagging functions, the technician will generate an internal trouble report to justify, track, and monitor the additional correcting repair activity. Because this subsequent

AT&T asserts that Qwest's results for OP-5 are unreliable, but supports its claim with arguments that do not address the reliability of the PID and that are, in any event, incorrect. Qwest III AT&T Comments at 67. AT&T's challenge must fail, if for no other reason than that AT&T relies on an example it erroneously believes OP-5 does not address. 55/ In the final analysis, though Qwest has long acknowledged that OP-5 has some limitations, *see* Qwest I *ex parte* 07/10/02, Tab 4, reliability is not one of the PID's shortcomings. 56/

Finally, the "composite hypothetical" Eschelon provides based on "Off-Net conversions," and the various points Eschelon makes in reliance on the hypothetical, Eschelon Qwest III Comments at 11-16, have no probative value with respect to what OP-5 captures. The majority of Eschelon's allegations about what OP-5 does not capture are simply incorrect, *see* Qwest III Williams Reply Decl. ¶ 29, and the remainder simply reflect inherent limitations in OP-5 similar to those Qwest has already addressed. *See* Qwest I *ex parte* 07/10/02, Tab 4. In fact, the hypothetical and the arguments based on it are riddled with problems. This includes Eschelon's erroneous interpretation of the OP-5 PID exclusion "Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete."

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internal trouble report is generated prior to closure of the DEMARC tagging trouble report, it is not captured by OP-5 per the exclusions set forth for that PID. *Id*.

55/ AT&T's faulty example concerns a provisioning problem where "a customer orders Call Waiting, but Caller ID is provisioned," AT&T Qwest III Comments, Finnegan Decl. ¶ 24, that is incorrectly proposed in the context of a provisioning error. *See* Qwest III Williams Reply Decl. ¶ 22.

56/ *See* Qwest III Williams Decl. ¶ 21 (citing *Liberty Consulting's Final PMA Report* at 66, ¶ 4(d)). There is no merit to AT&T's claim the Qwest witness Michael Williams "admitted" in hearings in Minnesota that OP-5 does not capture problems corrected through service orders. Qwest III AT&T Comments, Finnegan Decl. ¶ 24 n.21. The statements made during that testimony were in another context and did not pertain to the assertions AT&T levels here. *See* Qwest III Williams Reply Decl. ¶¶ 23-24.

See Qwest III Williams Reply Decl. ¶¶ 30-31. It also includes Eschelon's focus on "line side switch translations" and its related failure to recognize that troubles reported prior to the technician completing installation work are properly excluded from OP-5 results under the PID's definition. 57/ No meaningful findings regarding OP-5 or Qwest's implementation of it can be made based on Eschelon's hypothetical.

In sum, OP-5 properly and reasonably captures new service installation quality in a manner that is reliable and demonstrates Qwest's compliance with Section 271. Qwest properly handles exclusions based on the PID definition, such that OP-5 captures everything the PID is intended to track. In addition, Qwest has committed – and has taken significant efforts -- to develop improvements to overcome limitations in OP-5 that exist in the current version PID, which was accepted by all the parties at the time of its inception. *See* Qwest III Williams Reply Decl. ¶¶ 41-46.

C. AT&T's LSR Rejection Rate Claims are Misleading and Incorrect

AT&T criticizes what it claims is a Qwest rejection rate of 30% for local service requests ("LSRs"). AT&T Qwest III Comments, Finnegan/Connolly/Wilson Decl. ¶¶ 59-60. This argument has no merit. AT&T's 30% figure is based on two PIDs, PO-4A-2 and PO-4B-2, that measure auto-rejects returned in a matter of seconds and which are only diagnostic standards in any event. Qwest III Williams Decl. ¶ 5. Meanwhile, AT&T ignores LSR rejection results for the one PID the ROC collaborative did establish standards for, PO-3, which measures the

57/ *Id*. ¶ 36; *see also id*. ¶ 25 (categorizing typical CLEC calls to the ISC within 72 business hours of service installation). With respect to Eschelon's complaints regarding line side switch translations, Qwest notes that the preponderance of data reflected by the OSS test demonstrate Qwest is doing very well in the area of switch translations (99% success rate). *See id*. ¶ 36 (citing AT&T Qwest III Comments, Finnegan Decl. ¶ 21 (referencing ROC OSS Test Exception 3043 regarding switch translations)).

timeliness of reject notifications. Qwest's results for this measurement satisfy the standards and clearly demonstrate Qwest is returning auto-rejects in less than 5 seconds on average. 58/ Notably, neither AT&T nor any other CLEC has alleged that auto-rejects are unduly delayed.

D. Qwest Properly Categorized Eschelon's UNE-Star Lines as UNE-P

The Commission must reject Eschelon's renewed challenge to Qwest's reporting UNE-Star results within UNE-P data, which includes the Eschelon-specific "UNE-E" product. Eschelon Qwest III Comments at 44-47. As Qwest has shown, UNE-Star is a UNE combination, not resale, so the proper place to report it is in PID categories specified for combinations, *i.e.*, UNE-P. Qwest II Williams Reply Decl. at ¶¶ 76-81; Qwest I Reply Comments at 74-79. Because Eschelon's lines were converted to UNE-E/UNE-Star rates by agreement with Eschelon over two years ago, Eschelon's reporting changed to UNE-P, as part of a change of which all CLECs were made aware. 59/ Once arrangements evolved to provide the services as a UNE combination, rather than as Resale, it was no longer appropriate to report them as Resale, and Qwest then re-ran the commercial performance retroactive to the beginning of 2001. *Id.* ¶ 48. Analysis of these results submitted with the Qwest III Supplemental Brief and in an *ex parte* submission shortly thereafter shows that reporting UNE-Star with other UNE combinations

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58/ Qwest III Supplemental Brief, Att. 5, App. D, Colorado Commercial Performance Results at 78-79; Idaho Commercial Performance Results at 74-75; Iowa Commercial Performance Results at 77-78; Montana Commercial Performance Results at 66-67; Nebraska Commercial Performance Results at 72-73; North Dakota Commercial Performance Results at 65-66; Utah Commercial Performance Results at 76-77; Washington Commercial Performance Results at 78-79; Wyoming Commercial Performance Results at 65-66.

59/ *See* Qwest III Williams Reply Decl. ¶ 47-48. Qwest notified CLECs of the change in the Summary of Notes published with Qwest's October 2001 commercial performance results. *Id.* ¶ 47.

has no significant impact. *Id.* ¶ 49. Thus, Eschelon's complaints lack merit both conceptually and empirically.

VI. QWEST'S RATES FOR UNBUNDLED NETWORK ELEMENTS AND INTERCONNECTION COMPLY WITH TELRIC AND DO NOT CAUSE A "PRICE SQUEEZE"

Qwest's rates for UNEs and interconnection in the nine states subject to this application comply with Section 252(d)(1) of the Act and the Commission's established pricing rules, including the Total Element Long Run Incremental Cost ("TELRIC") methodology. 47 U.S.C. § 252(d)(1); 47 C.F.R. § 51.501 *et seq*. That conclusion is established by the enormous record compiled in the Qwest I and Qwest II proceedings. In addition, to expedite the consideration of this application and eliminate issues in controversy, Qwest has unilaterally implemented significant reductions to rates that were already TELRIC-compliant. Most recently, Qwest reduced certain non-loop recurring rates in the eight states other than Colorado to moot AT&T's argument that the Act requires a disaggregated benchmarking analysis as between switching and shared transport, even though that argument is without merit because, among other considerations, those UNEs are always ordered together. 60/

Although AT&T and others recycle various objections to Qwest's rates, Qwest fully refuted these arguments in the Qwest I and Qwest II proceedings. 61/ AT&T claims

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60/ *See, e.g., New Hampshire/Delaware 271 Order*, ¶¶ 50-54. Given these most recent reductions, it is difficult to understand why AT&T continues to attack Qwest's benchmarked rates on the ground that they are the product of an aggregated benchmarking analysis. AT&T Qwest III Comments at 76-77, AT&T Lieberman/Pitkin Decl. ¶¶ 14-20. *See also ex parte* letter from David L. Sieradzki, counsel for Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-314 (Oct. 7, 2002) (describing rate reductions).

61/ *See generally* Qwest III Thompson/Freeberg Reply Decl., Reply Exh. JLT/TRF-1 (listing opposing parties' arguments in this proceeding and specific page references to Qwest's responses to those arguments in Qwest I and Qwest II). For example, AT&T devotes 3 ½ pages of its brief

nonetheless to have "recently discovered" what it calls an "additional TELRIC error" relating to the Colorado PUC's determination of the network operations expense input to Qwest's unbundled loop rates. 62/ As a threshold matter, that argument is improperly presented here because AT&T never raised it before the Colorado PUC, and the Commission does not generally consider arguments – particularly state-specific fact-intensive pricing arguments – that a party has failed to raise in the underlying state pricing proceeding. *See, e.g., BellSouth 5-State 271 Order* ¶¶ 31, 78 & n.239; *Vermont 271 Order* ¶ 20. In addition, AT&T's "recently discovered" argument is flawed on the merits for the several independent reasons discussed in the Reply Declaration of Jerrold L. Thompson and Thomas R. Freeberg ("Qwest III Thompson/Freeberg Reply Decl.") ¶¶ 6-14.

At bottom, this "recently discovered" argument adds nothing to AT&T's general claim – which Qwest addressed and refuted in the Qwest I proceeding, see Qwest I Thompson Reply Decl. ¶¶ 64-68 – that actual network operations expenses should be reduced by 50% to compute a forward-looking input within the HAI model. This claim was properly rejected not only by the Colorado PUC, which found that "no support exists" for it, but also by the Arizona Corporation Commission, the Minnesota PUC, and every other state commission in Qwest's

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and substantial portions of a declaration to arguing that Qwest should have used state-specific minutes-of-use rather than standardized minutes-of-use in its benchmark analysis, AT&T Qwest III Comments at 73-76 & AT&T Lieberman/Pitkin Decl. ¶¶ 8-13. But AT&T says nothing beyond what Qwest has already fully refuted in prior proceedings. Qwest I Reply Comments at 103-05; Qwest I Thompson Reply Decl. ¶¶ 80-89; Qwest II Reply Comments at 88-89; Qwest II Thompson Reply Decl. ¶¶ 11-15. *See also New Jersey 271 Order* ¶ 53 ("use of the standardized demand assumptions in the *Pennsylvania Order* may also be reasonable depending on the particular section 271 application under review").

62/ AT&T Qwest III Comments at 71; *see also* AT&T Qwest III Denny Decl., *passim.*

region that has considered it. 63/ Moreover, contrary to AT&T's argument that the Colorado PUC adopted a figure higher than what Qwest advocated, in fact the PUC adopted a network operations expense "dollar additive" that is 4% lower than the figure that Qwest witnesses proposed for use in the context of the HAI model. Finally, AT&T's selective focus on the network operations expense figures obscures the Colorado PUC's overall treatment of Qwest's expenses. Indeed, the PUC-ordered rates aggressively assume that an efficient carrier could operate at an overall level of operating expenses 66% lower than what Qwest actually incurs. Qwest III Thompson/Freeberg Reply Decl. ¶¶ 9-10.

As for AT&T's and other parties' renewed contentions regarding the potential for a "price squeeze" between Qwest's UNE rates and the revenues a CLEC could anticipate receiving, Qwest has already demonstrated that there is no UNE price squeeze in any of the application states, and its recent UNE rate reductions further increased CLEC margins. In fact, AT&T appears to have abandoned its previous assertion that a price squeeze exists in North Dakota, Utah and Wyoming, and acknowledges that its statewide average gross margin in the states for which it still alleges a price squeeze – Iowa, Idaho, Montana, and Washington – is *higher* than it had stated previously. *See* Qwest III Thompson/Freeberg Reply Decl. ¶ 23. As Qwest has explained before, AT&T has failed utterly to substantiate its asserted cost and revenue figures, which remain subject to the numerous flaws explained at length in Qwest's previous filings.64/ AT&T – not Qwest – bears the burden of proof in demonstrating a price squeeze, 65/

63/ *Colorado Pricing Order,* Qwest I, Att. 5, App. I at 62; *see* Qwest III Thompson/Freeberg Reply Decl. ¶ 12 n.19 (full citations to Arizona and Minnesota orders).

64/ The D.C. Circuit's recent decision *WorldCom v. FCC*, No. 01-1198 (D.C. Cir. Oct. 22, 2002), has no impact on the price squeeze arguments raised by any party here. The *WorldCom* court remanded the *Massachusetts 271 Order's* conclusions with respect to price squeeze allegations "for further consideration in light of" *Sprint v. FCC*, 274 F.3d 549 (D.C. Cir. 2001),

and it has failed completely to carry this burden. *See* Qwest III Thompson/Freeberg Decl., ¶¶ 23-27.

VII. NONE OF THE REMAINING OBJECTIONS RAISED BY COMMENTERS PROVIDES ANY BASIS FOR DENIAL OF QWEST'S APPLICATION

A. "Unfiled Agreement" Issues Do Not Present Reasons For Denial Of This Application

1. All Interconnection Agreements Are On File and Available to Other CLECs

AT&T once again argues that the so-called "unfiled agreements" issue presents a reason for the Commission to deny this application. *See* AT&T Qwest III Comments at 40-50. Several other parties echo AT&T in one respect or another. However, these arguments disregard both the facts and relevant Section 271 law.

This matter already has been the subject of more than extensive debate in the context of Qwest's initial applications. Indeed, the Commission specifically invited comment on the relevance of the unfiled agreements to Section 271. *See* Public Notice, WCB Docket No. 02-148 (rel. Aug. 21, 2002). In response, the State Authorities uniformly urged the Commission to

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which, after that order had been issued, rejected a "virtually identical" price squeeze analysis. Qwest's arguments in Qwest I and Qwest II regarding the price squeeze relied on post-*Sprint* Section 271 orders, and accounted for the *Sprint* court's conclusion that the Commission had failed to "consider" price squeeze claims in light of the Supreme Court's decision in *FPC v. Conway Corp.*, 426 U.S. 271 (1976). The Commission has now fully considered – and rejected – *Conway*'s applicability in the telecommunications context. *Vermont 271 Order* ¶ 67.

65/ *See, e.g.*, *Verizon Delaware/New Hampshire Order* ¶ 145; *Verizon New Jersey Order* ¶ 175; *Verizon Vermont Order* ¶ 73; *BellSouth Georgia/Louisiana Order* ¶ 290; Qwest III Thompson/Freeberg Reply Decl. ¶ 26. The Commission therefore must reject AT&T's claim that the Commission is bound to accept its own internal cost "estimates" because "Qwest has *not* submitted any evidence that contradicts" those estimates. AT&T at 79. Moreover, the only evidence AT&T submits is the same Bickley affidavit that this Commission has already expressly rejected. *See BellSouth Five-State Order* ¶ 288; Qwest III Thompson/Freeberg Reply Decl. ¶ 27.

reject efforts to squeeze this enforcement issue into the Section 271 box. The Colorado PUC, for example, put the matter into proper perspective against the record of Qwest's actions to open its markets and meet Section 271 requirements:

> [T]he ROC performed the most rigorous OSS test yet performed on an ILEC in the country. Qwest substantially passed this test. The COPUC developed the most rigorous performance assurance plan yet implemented by an ILEC. The COPUC, with the ROC, Qwest and CLECs, developed the most comprehensive SGAT yet filed by an ILEC. The COPUC reset TELRIC rates for Colorado, which rates have benchmarked the entire region.
>
> At the end of the day, in light of all these notable market-opening accomplishments, *it would be a grave error to deny or delay granting Section 271 authority because of a trifle such as the unfiled agreements -- and a trifle, no less, that is being dealt with through Section 252 transparency and an enforcement investigation*. 66/

The comment of the Colorado PUC is instructive, not to minimize a compliance issue, but to emphasize its small place in the context of a Section 271 proceeding. Other State Authorities emphasized the same theme in their own comments, stressing that unfiled agreements questions may present enforcement issues but should not delay approval of this application. 67/ And now

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66/ Colorado PUC Comments, WCB Docket No. 02-148, at 12-13 (Aug. 28, 2002) (emphasis added).

67/ *See, e.g.,* IUB Comments, WCB Docket No. 02-148 (Aug. 28, 2002) (issue of unfiled agreements has been reviewed and resolved in a separate docket" and should not delay Section 271 approval); North Dakota PSC Comments, WCB Docket No. 02-148 (Aug. 28, 2002) ("reaffirm[ing] its conclusion" that this issue "has remedies that are better implemented outside the Section 271 process); Idaho PUC Comments, WCB Docket No. 02-148, at 1 (Aug. 28, 2002) (issue should not affect Section 271 consideration).

It also is relevant that the states uniformly turned down AT&T's requests that they reopen their 271 proceedings to consider the unfiled agreements issue in that context. *See* Order Denying Motion, *In the Matter of the Colorado Public Utilities Commission's Recommendation to the Federal Communications Commission Regarding Qwest Corporation's Provision of In-Region, InterLATA Services in Colorado*, Colorado Public Utilities Comm'n, Docket No. 02M-260T (June 11, 2002); Order to Consider Unfiled Agreements, *In re U S WEST Communications, Inc., n/k/a Qwest Corporation*, Iowa Utilities Board, Docket Nos. INU-00-2, SPU-00-11 (June 7,

these Authorities have reaffirmed their support for approval of Qwest's current application in the face of continuing rhetoric regarding unfiled agreements.

Shortly after Qwest filed the Consolidated Application here, the Commission issued its important order in response to Qwest's Petition for Declaratory Ruling on the question of which contracts between ILECs and CLECs qualify as interconnection agreements that must be filed pursuant to Section 252(a)(1). *See Memorandum Opinion and Order*, WC Docket No. 02-89, FCC 02-276 (rel. Oct. 4, 2002) ("*Declaratory Ruling Order*"). The Commission concluded that a contract must be filed and go through the 90 day approval process if it "creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation . . . ." *Id*. ¶ 8. The Commission provided additional guidance on this issue, noting that settlement agreements that simply provide for "backward-looking" consideration need not be filed. *Id*. ¶ 12. The FCC also indicated no need to file order and contract forms used to request service, or agreements with bankrupt competitors that are entered into at the direction of a

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2002) ("Iowa Order to Consider Unfiled Agreements"); Notice of Commission Action, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Montana Public Service Comm'n, Docket No. D2000.5.70 (June 3, 2002); Motion to Reopen 271 Proceedings Denied, *In the Matter of Qwest Corporation, Denver, Colorado, filing its notice of intention to file Section 271(c) application with the FCC and request for Commission to verify Qwest Corporation's compliance with Section 271(c)*, Nebraska Public Service Comm'n, Application No. C-1830 (June 12, 2002); Transcript of Special Meeting, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, North Dakota Public Service Comm'n, Case No. PU-314-97-193 (June 13, 2002); *accord*, Order on AT&T Motion to Reopen Proceedings, *In the Matter of the Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996, Wyoming's Participation in a Multi-State Section 271 Process, and Approval of its Statement of Generally Available Terms*, Wyoming Public Service Comm'n, Docket No. 70000-TA-00-599 (June 18, 2002).

bankruptcy court or trustee and do not modify terms of underlying interconnection agreements. *Id*. ¶ 13

Qwest has no objection to the Commission's ruling, and is glad to have substantial closure around this important issue. The FCC ruling places a larger number of ILEC-CLEC contracts into the zone requiring prior regulatory approval than Qwest had suggested was required, and a smaller number than some other parties had proposed. However, Qwest has always stated that its priority is simply to receive clarification of ILEC obligations in this area.

For present purposes, what is most significant is that Qwest already has been applying a policy of making filings under Section 252 that fully encompasses the standard announced by the Commission. This matter is discussed in more detail in the Reply Declaration of Larry Brotherson, Att. 16. Specifically, in May 2002 Qwest instituted new management review procedures for contracts with CLECs and applied a standard under which it has been filing all new contracts, agreements, and letters of understanding negotiated with CLECs that create obligations in connection with Sections 251(b) or (c), no matter the nature or scope of such obligations. Qwest has filed all new contracts entered into with CLECs since the spring that meet this standard. *Id*. ¶ 8. In addition, Qwest has filed all currently effective provisions in other previously unfiled contracts with CLECs involving the nine states here insofar as such provisions involve ongoing current obligations under Sections 251(b) or (c). Qwest filed all relevant agreements in Iowa on July 29, and those agreements were approved on August 27. Similarly, Qwest filed all relevant agreements in the other eight states on August 21 and 22. *Id*. ¶ 9.

As noted, the Qwest policy governing these filing decisions fully encompasses the standard announced by the Commission this month. Hence, the practical effect of these filings is

that all of the company's currently effective interconnection obligations in the nine states are on file and either approved, or waiting on approval. As noted in Exhibit A to Mr. Brotherson's Declaration, three of the eight states covered by the August filings already have approved the contracts as interconnection agreements and permitted them to take effect. The remaining five states have processes in place to complete their review of the contracts on or before November 20, when the 90 day review process provided by Section 252(e)(4) will expire. In the interim, Qwest has posted the filed agreements on its web site and invited CLECs to request the currently effective provisions under the opt-in policies applicable under Section 252(e) pending state commission approval of such provisions. *Id*. ¶¶ 10-12.

Some parties, most notably AT&T, have attempted to argue that Qwest has not made a complete filing of all of its currently-effective contracts with CLECs in the nine states. In particular, AT&T attaches a declaration of Kenneth Wilson in which Mr. Wilson purports to identify contracts that he submits should have been filed as interconnection agreements. AT&T Qwest III Comments, Declaration of Kenneth Wilson, Tab B.

Mr. Wilson, however, is incorrect. In his chart he recognizes that he does not have information as to whether particular agreements, or provisions in agreements, remain in effect. But without this information Mr. Wilson is not in a position to speak to the completeness of Qwest's filings at all. Qwest has reviewed its records again against Mr. Wilson's matrix, and the results are provided here as Exhibit B to the Declaration of Mr. Brotherson. In that Exhibit Qwest confirms that each of the relevant provisions contained in the contracts identified by Mr. Wilson either no longer is in effect, or its currently effective terms are on file and available. Furthermore, Mr. Brotherson speaks to the allegation of Mr. Wilson that Qwest has not filed oral contracts with CLECs that would qualify as interconnection agreements under the Commission's

standards. Mr. Brotherson states that it is not Qwest's business policy or practice to address such interconnection matters other than through written contracts, and that Qwest is not aware of any oral agreements that are in effect today that would come within the purview of Section 252's filing requirement. 68/

Similarly, PageData has claimed that Qwest failed to file two contracts as interconnection agreements in Idaho although it submitted those contracts in Iowa. However, Mr. Brotherson explains that neither of the contracts cited by PageData contain currently effective terms. They are older agreements that were submitted in Iowa for the different purpose of responding to an order for all contracts with CLECs, without differentiating between ongoing currently effective provisions versus those that had been superseded or terminated. 69/

In sum, Qwest is in full compliance with Section 252 as interpreted in the Commission's new Declaratory Ruling Petition. All of its current ongoing obligations to CLECs in the nine states arising under Sections 251(b) or (c) are on file and either approved, or pending approval no later than November 20, 2000.

68/ Brotherson Decl. ¶ 17. Mr. Wilson and others make reference to the findings of an Administrative Law Judge in Minnesota that a written contract between Qwest and McLeod was modified by oral agreement to provide McLeod with a discount on its purchases from Qwest. See AT&T Qwest III Comments at 42. This is a matter that has been greatly disputed; it is Qwest's position that no such oral amendment was allowed by the written agreement or otherwise made. For present purposes, however, what is relevant is that on September 16, 2002, Qwest and McLeod agreed to terminate the written contract and any and all amendments, without addressing whether any such oral amendment even existed. *See* Brotherson Decl., Exhibit B.

69/ *Id.* ¶ 18. PageData also references an old agreement involving U S WEST New Vector (now Verizon) that is on file in Idaho. As Qwest has explained in proceedings before the Idaho PUC, this agreement is not designed for paging interconnection. See Affidavit of Bryan Sanderson, Case No. USW-T-00-03, ¶¶ 20-22 (filed Oct. 4, 2002). In any event, such carrier-specific disputes do not have a place in a Section 271 review.

2. Enforcement Actions Related to any Past Failure to File Contracts With CLECs Are Not a Basis For Delaying Action Here

Qwest recognizes that some states are evaluating the significance of Qwest's past failure to file certain contracts with CLECs that meet the FCC's standard as expressed in the new Declaratory Ruling. The Iowa Board completed such a review in May, concluded that certain agreements should have been filed under the standard the Board announced at that time, and directed Qwest to make a compliance filing, which has been done. The Board did not impose any fines or penalties. 70/ The FCC stated in its Declaratory Ruling that such enforcement proceedings could proceed, and deferred to the states to evaluate other line-drawing questions that arise in the context of specific ILEC-CLEC agreements. 71/

As noted above, the State Authorities and the Department of Justice continue to support grant of this Application notwithstanding any review of Qwest's past compliance on this issue. The Department previously stated that "it is not apparent that the remedy for . . . prior violations [of Section 251 or 252], if any, lies in these proceedings rather than in effective enforcement through dockets in which such matters are directly under investigation." DOJ Qwest I Evaluation at 3. Just so. The Telecommunications Act and prior Commission precedent make clear that Section 271 proceedings are not the place to litigate past acts. This case is not different from the one addressed by the Commission in its *BellSouth Georgia/Louisiana Order*. In that proceeding two CLECs claimed that a BellSouth interconnection policy violated the

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70/ *See* Order Making Tentative Findings, Giving Notice For Purpose of Civil Penalties, and Granting Opportunity to Request Hearing, *In re AT&T Corporation v. Qwest Corporation*, Iowa Utilities Board, Docket No. FCU-02-2 (May 29, 2002).

71/ Declaratory Ruling Order ¶ 10. The Colorado PUC, for example, has opened a proceeding that will evaluate the scope and significance of any Section 252 filing lapses. However, the Commission continues to support grant of the application here. *See* CPUC Qwest III Comments.

CLECs' "rights to interconnect 'at any technically feasible point' within BellSouth's network," and that, as a result, the BOC had not been satisfying its obligations under checklist items 1 and 9. *BellSouth Georgia/Louisiana Order* ¶ 207. The Commission rejected the CLECs' argument because (a) the BellSouth policy at issue had been rescinded, *id.* ¶ 208, (b) a Section 271 docket was not the place "to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors," *id*. (citing *SBC Kansas/Oklahoma Order* ¶ 19), and (c) the issue concerned matters "open . . . before [the] Commission" in another docket. *Id*.

Such considerations counsel in favor of resolving the "unfiled agreements" litigation in the dockets devoted to those issues rather than here. The Commission has recently clarified the law, and Qwest is in compliance with the law. Any enforcement actions regarding Qwest's past actions will not make the local exchange market in these states any more or less open to competition. While this Commission has said (in the *only* paragraph of FCC authority that the other parties or their witnesses have ever cited on this subject) that it is "interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations," *Ameritech Michigan Order* ¶ 397, it has made just as clear (indeed, in the very next sentence) that it is not interested in such misconduct for its own sake. Rather, such evidence is relevant only insofar as it "would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority." 72/ The unfiled agreements

72/ *Id. See also* Facilitator's Public Interest Report at 9 (finding that "the public-interest standard" is not "a punitive one, but rather a forward looking, or predictive one"); Workshop 4, Part 2, Findings and Recommendation Report of the Commission and Procedural Ruling, *In the Matter of the Investigation into the Entry of QWEST CORPORATION, formerly known as U S WEST COMMUNICATIONS, INC., into In-Region, InterLATA Services under Section 271 of the*

dispute does not in any way overshadow the voluminous record evidence here that Qwest's local markets are open to competition now and would remain so after a grant of Qwest's application. The unanimous state commission comments, and the corresponding views of the Justice Department, are fully consistent with this precedent.

AT&T and other parties make much of a recent decision of an Administrative Law Judge in Minnesota concluding that Qwest violated Section 252 by failing to file certain contracts with CLECs. AT&T Qwest III Comments at 42. Minnesota is not one of the states at issue here. In any event, this decision has no material bearing on an application under Section 271.

First of all, Qwest should state for the record that it strongly objects to the findings made in that order, which disregard key evidence presented at the hearing and improperly credit hearsay and other untested claims. Qwest also objects to the due process violations in the proceeding, including the key role of a lawyer as the primary witness for the complaining Department of Commerce who also essentially served as co-counsel for the Department in all respects, including preparing the testimony of other Department witnesses. 73/

Furthermore, Qwest has objected to the failure of the ALJ to evaluate the material significance of various filing lapses he found, or the extent of their discriminatory effect. Qwest demonstrated that in many instances the failure to file had little or no practical effect because Qwest was providing substantially the same terms to all CLECs anyway, or because the terms

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Telecommunications Act of 1996, Oregon Public Utility Comm'n, Docket No. UM 823 (Jun. 3, 2002) at 46 (finding that "[t]he public interest test is prospective in nature").

73/ *See* Qwest Corporation's Proposed Procedure For Penalty Phase, Exceptions To Administrative Law Judge's Findings Of Fact, Conclusions Of Law, And Recommendation, And Request For Oral Argument, MPUC Docket No. P-421/C-02-197 (filed Sept. 30, 2002).

were materially available through another interconnection agreement, because a provision was in effect only for a short period and/or related to a CLEC-specific matter, or otherwise. The ALJ also disregarded genuine uncertainty regarding the scope of Section 252 filing obligations prior to the Commission's Declaratory Ruling. In the mind of the ALJ, any failure to file was prima facie intentional and discriminatory.

The Minnesota proceeding is not over. The PUC has affirmed the ALJ's decision, and briefing is under way with regard to penalties and other remedies. Meanwhile, however, Qwest has reserved all rights to seek judicial review.

Qwest does not minimize any non-compliance, in any circumstances. It has taken remedial action to ensure that it will fully comply with Section 252 as articulated by the Commission. It will continue to address with the states the significance of any past compliance lapses. The relevant point, however, is that none of those prior failings are relevant to this Section 271 application, or provide a basis for denying consumers the benefit of greater long

B. Allegations Regarding Qwest's Conduct In Connection With QCCC Site Visits Are Without Merit

Relying solely on the statement of a former Qwest employee, Edward F. Stemple, AT&T purports to have unearthed "truly shocking" behavior by Qwest in the course of certain site visits by representatives of the Department of Justice and the FCC Staff to the Qwest CLEC Coordination Center in Omaha, Nebraska (the "QCCC"). *See* AT&T Qwest III Comments at 3-4 and Stemple Decl. In particular, AT&T alleges that Qwest concealed from visiting regulators mechanized loop testing ("MLT") activities at the QCCC during certain of their visits to the facility in May, June, July and September 2002. *Id.*

AT&T's allegations are demonstrably without merit. Due to the serious nature of the allegations, however, and in order to address questions from Commission Staff and the Justice Department, Qwest's Senior Vice President, Policy and Law, R. Steven Davis, promptly responded to AT&T's charges by letter to the Secretary dated October 21, 2002 (the "Davis Letter") (attached hereto as Appendix A). That letter set out extensive evidence refuting AT&T's and Mr. Stemple's allegations; this evidence is corroborated by the reply declarations attached hereto at Tabs 3-11.

Qwest will not restate all of that evidence here. It is sufficient to point out that Mr. Stemple is a former Qwest employee who has exhibited strong hostility to Qwest and whose employment was terminated on September 4, 2002. *See* Davis Letter at 2; Reply Declaration of Jason Best, Att. 3, at 3. **[*** CONFIDENTIAL MATERIAL BEGINS ***

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CONFIDENTIAL MATERIAL ENDS *]** *See also* AT&T Comments, Stemple Decl. at Att. 2 (e-mail from "Swamp Dogg" – evidently, Mr. Stemple -- urging Senator John McCain, with respect to Qwest, to "take her down").

Mr. Stemple alleges (based on double hearsay) that a meeting took place prior to a July 23, 2002, site visit by FCC Staff in which QCCC employees were instructed to conceal their activities with regard to MLT testing. Mr. Stemple admits he was not present at any such meeting, and, in any case, his allegations are untrue. As demonstrated by the declarations of several persons with personal knowledge of the events surrounding each of the QCCC site visits -- including each and every service representative who participated in any visit by the FCC Staff and DOJ -- no such meeting took place, nor were QCCC employees instructed at any time to conceal any of their activities during the FCC or Justice Department site visits. *See* Reply Declaration of Kathie Simpson, Att. 9, at 1-2. *See also* Reply Declaration of Derek Breeling, Att. 4; Cheshier Reply Decl. at 7-8; Reply Declaration of Jeff Leege, Att. 6; Reply Declaration of Kerri Sibert, Att. 8; Reply Declaration of Donovan Trevarro, Att. 10; Reply Declaration of Keith White, Att. 11.

Mr. Stemple also alleges that Qwest removed certain MLT-related signage from display at the QCCC during the FCC site visit in order to conceal MLT activities from regulators. This claim also is without merit. As explained in the Davis Letter and in the reply declarations attached hereto, pages referencing performance of MLT testing were removed from certain chart-boards in the QCCC during certain of the site visits. However, this action was not intended or designed to conceal that MLT testing is conducted at the QCCC. Employees continued to do their job, and recall showing MLT-related data. Indeed, as discussed above at Section III.A, the MLT testing done in the QCCC enhances the quality of the center's loop provisioning activity. The pages were taken down from the chart-boards based on an admittedly injudicious decision by a single Qwest employee who was concerned that they would precipitate a discussion about unrelated technical and policy issues regarding pre-order MLT that she was

not prepared to address. *See* Davis Letter at 4-5; Reply Declaration of Nancy Lubamersky, Att. 7 ("Lubamersky Reply Decl."), at 2. *See also* Cheshier Reply Decl. at 8-9.

Other than this, Mr. Stemple's allegations are meritless. No changes were made to Qwest's practices or procedures during site visits, and employees were instructed to perform their work in the normal manner during these visits. *See* Davis Letter at 5; Cheshier Decl. at 9-10; Lubamersky Reply Decl. at 3. AT&T and Mr. Stemple have not demonstrated otherwise. 74/

C. Other Issues

1. Track A

Qwest has demonstrated – and each of the State Authorities has confirmed – that there are CLECs providing service predominantly over their own facilities to more than a *de minimis* number of both residential and business customers in each of the application states and that the Track A requirements have therefore been satisfied. *See generally* Supplemental Declaration of David L. Teitzel, "The State of Local Exchange Competition – Track A Requirements," Qwest III, Att. 5, App. A, Tab 1. Although the Idaho PUC's written consultation specifically confirms that Track A has been satisfied in Idaho, the Idaho PUC points to some alleged "errors" in Qwest's competitive data. *See* Qwest III Idaho PUC Written Consultation

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74/ Touch America repeats its argument that Qwest has been violating Section 271 under the "contrived concept of 'lit capacity' IRUs." Touch America Qwest III Comments at 14. Touch America argues that Qwest's announcement of possible restatements of revenues from IRU asset sales is somehow an admission that these asset sales violate Section 271. This is not correct. Sales of optical capacity assets are not the provision of "telecommunications services" as defined in Section 153(43) of the 1996 Act. Qwest already has addressed this issue in its reply comments in Qwest I and II. *See* Qwest I Reply Comments at 125 fn.110; Qwest II Reply Comments at 124 n.97. Any restatement of revenues received from optical capacity asset sales will not change the fact that these items are assets, and that such transactions (which Qwest advised the Commission would continue after its merger with U S WEST) do not implicate Section 271.

at 3 and Hall Affidavit. Specifically, the Idaho PUC suggests that it "has no record" of certain CLECs and that certain other CLECs "are not currently providing . . . local exchange service" in Idaho. 75/ However, contrary to the Idaho PUC's submission, Qwest reiterates that all of the wholesale provisioning data included as part of Mr. Teitzel's declaration were culled directly from Qwest's wholesale billing system. Nevertheless, despite the uncertain activities of certain CLECs, Ms. Hall's affidavit specifically confirms that at least three predominantly facilities-based carriers are providing service to residential end users in Idaho. 76/

2. Checklist Item 1: Interconnection

Qwest satisfies the requirements of Checklist Item 1 of Section 271 of the 1996 Act concerning interconnection. 77/ Level 3 complains, however, that Qwest does not count Internet-bound traffic when determining the relative use of the two-way facilities carrying traffic on Qwest's side of the point of interface. Level 3 raises an argument that the Commission has confirmed has no place in a Section 271 proceeding, and that is unfounded for other legal and

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75/ *See* Qwest III Idaho PUC Written Consultation, Hall Affidavit at 2-3. Ms. Hall's affidavit does not specify how she has arrived at her conclusion regarding these CLECs.

76/ *Id*. at 2. These three CLECs are Project Mutual Telephone Company ("PMT"), McLeodUSA and CTC Telecom, Inc. ("CTC"). PMT serves both residential and business customers in Burley and Heyburn, Idaho, exclusively *via* its own facilities. McLeodUSA is a predominantly facilities-based CLEC serving residential and business customers in various communities in Idaho *via* a combination of its own facilities, stand-alone UNE loops, UNE-Platform and resale. CTC is a facilities-based CLEC subsidiary of Cambridge Telephone, an Independent LEC, serving a primarily residential subdivision in Eagle, Idaho. This community is in the greater Boise area and is within Qwest's Idaho service territory. *See generally* Qwest I *ex parte* 070902.

77/ *See generally* Declaration of Thomas R. Freeberg, Interconnection, Qwest I Att. 5, App. A; Declaration of Thomas R. Freeberg, Interconnection, Qwest II Att. 5, App. A.

factual reasons, as explained in greater detail in the Qwest III Thompson/Freeberg Reply Declaration ¶¶ 29-31. 78/

3. Checklist Item 6: Unbundled Switching

AT&T notes in its Comments that Qwest has recently revised its method of counting lines for purposes of the switching carve-out. AT&T Qwest III Comments at 80. As described in Qwest's Application, Qwest now counts customer lines on a per-end-user-location basis, rather than a per-wire-center basis, to determine the applicability of the switching carve-out. Qwest III Addendum, Tab 11, at 1. AT&T is incorrect, however, in its assertion that this change constitutes an acknowledgment that "Qwest's previous policy was unlawful." AT&T Qwest III Comments at 80 n.282.

In the first place, the Commission has given no indication, and Qwest does not concede, that the Wireline Competition Bureau's *Virginia Arbitration Order* is binding on nonparties. Furthermore, even if Qwest were required to comply with the *Virginia Arbitration Order*, it is not "beyond doubt," as AT&T asserts, that Qwest's former policy was inconsistent with its terms. Qwest's former position on the switching carve-out was different from the position Verizon took in the Virginia arbitration. Verizon proposed to count all of an end-user customer's lines in an entire LATA for purposes of applying the switching carve-out, whereas under its former policy Qwest would have counted an end-user customer's lines within a single, identified density zone-one wire center within the top 50 Metropolitan Statistical Areas identified

78/ With respect to AT&T's and OneEighty's offhand comments regarding Qwest's compliance with Checklist Item 1, Qwest has refuted these arguments in prior Section 271 filings incorporated by reference into this proceeding. *See generally* Qwest I Reply Declaration of Thomas R. Freeberg; Qwest II Reply Declaration of Thomas R. Freeberg.

in the *UNE Remand Order*. 79/ Finally, Qwest's position on the appropriate manner of applying the switching carve-out was entirely consistent with the language of the *UNE Remand Order*, and all but one of the states included in this application approved Qwest's position as well. 80/

The Commission has identified the parameters of the switching carve-out as a subject for consideration in its triennial UNE review proceeding. 81/ Until the Commission issues an order in that proceeding, the appropriate method of counting lines remains an open question. Qwest's former position therefore was not "unlawful." Qwest has nevertheless determined that, should it implement the switching carve-out, which it has not yet done, it will do so in a manner that is consistent with the *Virginia Arbitration Order*. 82/

79/ *See* Qwest II Reply Declaration of Lori A. Simpson at 19 n.35; *see also Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, ¶¶ 360-63 (July 17, 2002).

80/ The only state that required Qwest to count lines on a per-location basis was Washington. *See* Declaration of Lori A. Simpson, Unbundled Switching, Qwest II Att. 5, App. A, at ___.

81/ *Triennial UNE Review NPRM*, 16 FCC Rcd at 22806-08 ¶¶ 56-59.

82/ Qwest has addressed other allegations raised by commenters in its prior submissions incorporated by reference in this proceeding. AT&T's and WorldCom's rehash of their arguments concerning issues related to Checklist Items 2 and 4 (*see* AT&T Qwest III Comments at 81, WorldCom Qwest III Comments at 18), add nothing new to the arguments contained in their Qwest I and Qwest II comments. Qwest therefore refers the Commission to its earlier responses:

- Construction of new facilities. *See* Qwest II Reply Comments at 71-77.
- Access to facilities owned by Qwest affiliates. *See* Qwest I Reply Comments at 80-82.
- Combining network elements with telecommunications services. *See* Qwest I Reply Comments at 72.
- UNE-P provisioning intervals. *See* Qwest II Reply Declaration of Lori A. Simpson, at 14-15.

CONCLUSION

The local exchange market in each of the application states is demonstrably open to competition. Qwest has satisfied its statutory checklist obligations and otherwise complied with the requirements of the 1996 Act, and it will continue to do so in the future. Its entry into the interLATA market in each of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming will fulfill the promise of competition for all the residents of these states.

- Access to the NID. *See* Qwest II Reply Declaration of Karen A Stewart at 29-30.

Additional issues related to Checklist Items 2 and 4 are addressed in the Declarations of Lori A. Simpson and Karen A. Stewart that accompany these Supplemental Reply Comments.

With respect to AT&T's contentions regarding Qwest's compliance with Checklist Item 5 (and dark fiber), *see* Qwest I Reply Declaration of Karen A. Stewart at 12-14and Qwest II Reply Declaration of Karen A. Stewart at 13-19; with respect to WorldCom's allegations regarding Qwest's compliance with Checklist Items 7(II/III), *see* Qwest I Reply Declaration of Lori A. Simpson at 14-18 and Qwest II Reply Declaration of Lori A. Simpson at 24-31; and with respect to OneEighty's allegations regarding Qwest's compliance with Checklist Item 11, s*ee* Qwest I Reply Declaration of Margaret S. Bumgarner at 10-12 and Qwest II Reply Declaration of Margaret S. Bumgarner at 11-15.

Accordingly, for all the reasons stated herein and in its opening brief, Qwest's Consolidated Application should be granted.

Respectfully submitted,

QWEST COMMUNICATIONS INTERNATIONAL INC.

By: /s/

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October 25, 2002

APPENDIX A

ride the light℠

Qwest.

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R. Steven Davis
Seniuor Vice President
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October 21, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-B204
Washington, D.C. 20554

Re: WC Docket No. 02-314 – Application of Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming

Dear Ms. Dortch:

By this letter, Qwest is responding to the Declaration of Edward F. Stemple, which was filed by AT&T in support of its comments on Qwest's pending application in the above-referenced docket. Qwest will provide further information regarding this matter later this week in its reply comments and supporting declarations. However, due to the serious nature of Mr. Stemple's allegations, and because of questions from the FCC staff and the Department of Justice, Qwest believes that it is important to respond to these claims now.

Mr. Stemple's allegations were brought to my attention immediately after they were first seen in AT&T's comments last week. His charges relate to a visit by the FCC staff on July 23, 2002, to Qwest's CLEC Coordination Center in Omaha, Nebraska (the "QCCC"). Mr. Stemple's allegations are completely inconsistent with Qwest's policies and practices. Nevertheless, we have promptly investigated this matter. As I will summarize below, his declaration largely represents hearsay and innuendo that is directly contradicted by Qwest employees with personal knowledge of the facts upon which Mr. Stemple purports to speak. This letter is intended to provide an overview of the response to be included in Qwest's reply comments, which will be supported by appropriate declarations.

I should begin by noting that Mr. Stemple is a former employee who has exhibited strong hostility to Qwest, including during the time at issue here. In the last few words of his e-mail to Senator John McCain attached to his declaration, Mr. Stemple demonstrated that sentiment: He

says of Qwest, "Take her down." [1] As Mr. Stemple acknowledges in his declaration, Qwest terminated his employment on September 4, 2002. Qwest will describe Mr. Stemple's employment history in a confidential declaration with its Reply Comments.

Mr. Stemple's principal allegation is contained in paragraphs 8 and 9 of his declaration. In those paragraphs he alleges, based upon double hearsay, that a meeting took place before the July 23 visit by the FCC staff to the QCCC. Mr. Stemple admits that he was not present at the alleged meeting. Nevertheless, he asserts that he was "told" by unnamed individuals that other unnamed individuals were allegedly involved in the following meeting:

> These employees told me that certain employees had been taken into a room and told by Kathie Simpson, who was second in command at the QCCC, that they had been selected to be observed in the performance of their jobs by the visiting FCC staff.
>
> However, they were also told that, while the FCC people were sitting in, they were not to pull up the MLT screen or to mention MLT. They were also told that, if the FCC staff asked about MLT, they should say that they did not run them. [Stemple Declaration, paras. 8 and 9].

These allegations are absolutely untrue. No such meeting took place and no such instructions were given. In fact, Kathie Simpson (the Qwest manager Mr. Stemple accuses of impropriety) was not even at work on the day in question – she was on vacation the entire week.

Since receiving the Stemple Declaration, Qwest has interviewed each of the service representatives who took part in the July 23 FCC visit to the QCCC – as well as similar visits by the Department of Justice on May 15, 2002 and by the FCC Staff on June 5 and September 27, 2002. Each of the service representatives involved in the visits state that nothing took place that even resembled the alleged meeting or work activity direction described by Mr. Stemple. Each of the service representatives report the following:

- The only instruction they were given for the visits was to show what they did during their jobs.
- They were not told to avoid showing any aspect of the work of the QCCC, including MLT testing.
- They were not told to give any false, misleading or erroneous information.
- They were not told to avoid any subject, including MLT testing.

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[1] See e-mail from "Swamp Dogg" to Senator McCain attached to Mr. Stemple's Declaration at Attachment 2. Although the e-mail does not contain the name and address of the sender, Qwest assumes that Mr. Stemple in fact is "Swamp Dogg."

In fact, two of the service representatives recall displaying MLT test results during one of the first two visits.

Qwest also disputes Mr. Stemple's allegation that he approached his manager, Jason Best, about "hiding this from federal regulators" and that Mr. Best threatened to fire him if he told the visitors about the MLT testing. Mr. Best states that no such discussion took place. Mr. Best and Mr. Stemple did have a discussion during the July 23 visit. Mr. Best observed Mr. Stemple walking around, rather than performing his job. Mr. Best told Mr. Stemple to return to his work, but Mr. Stemple did not express concerns about hiding things from regulators, and Mr. Best did not threaten to fire Mr. Stemple if he told the FCC Staff about MLT testing.

Even leaving aside strong Qwest policy against the conduct Mr. Stemple alleges, his characterization of the situation does not make sense. There is nothing inappropriate about the MLT testing that Qwest performs at the QCCC. On the contrary, the testing is part of the overall quality check and repair activity that is performed for CLEC orders during the loop cutover process to assure that the provisioned loop will perform as specified.

The QCCC was opened in May, 2001 and is the Qwest Network Overall Control Office that exclusively coordinates the provisioning of unbundled loops for Qwest's 14-state region. One of its primary goals is to improve CLEC satisfaction with the provisioning of unbundled loops, a goal the QCCC has met as demonstrated by relevant performance data. To that end, the QCCC engages in numerous quality assurance processes in the provisioning of unbundled loops to CLECs. For circuits that are being transferred from Qwest retail or wholesale dial tone to a CLEC unbundled loop, Qwest performs several tests in the days before the scheduled transfer. One such provisioning test is the 48-hour dial tone test, in which Qwest verifies that dial tone exists to the CLEC switch. Another such test is the performance of an MLT two to three days prior to the due date for a CLEC unbundled loop. The QCCC instituted this process because it found that it was receiving trouble reports from CLECs shortly after installation of certain loops with marginal performance problems. To ensure that these marginal conditions were repaired prior to turning the loop over to the CLEC and, in turn, the CLEC customer, the QCCC instituted processes for performing an MLT on all unbundled loops it provisioned on behalf of CLECs.

All MLTs that the QCCC performs occur as a part of the provisioning process for unbundled loops. The QCCC does not perform MLTs on behalf of Qwest retail. [2/] Nor does it perform such tests for CLECs before an LSR is submitted. Similarly, the QCCC does not perform MLTs to determine if a loop could support a particular type of service prior to the submission of an order.

The information returned by the MLT tests done by the QCCC is retained by Qwest only as a record of the loop conversion activities. It is not maintained anywhere as a record of the characteristics of the loop. Because the test is run by the QCCC only on CLEC loop orders and

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[2/] Other divisions of Qwest perform MLT for other primarily repair purposes, but none of those activities result in Qwest's retail operations having access to pre-order loop information that is not available to CLECs.

after the CLEC submits an LSR, the resulting information is used only to provide assurance that the provisioned loop will perform as specified.

Thus, the MLTs that the QCCC performs have no relationship to or connection with loop qualification. The information returned by the MLT is minimal and is not used to populate any of Qwest's databases that contain loop make up information, such as the Loop Facilities Assignment System ("LFACS") or the Loop Qualification Database. Instead, information from the MLT is "cut" from the coordinator's screen and "pasted" into the remarks section of Qwest's Work Force Administrator (WFA) system. In addition, a hard copy of the CLEC's MLT results is maintained with the other test results for that unbundled loop conversion in a file at the QCCC. This is part of the QCCC's processes for maintaining all documentation associated with each coordinated cut that it performs. The remarks section of WFA is not a readily accessible or searchable field. As noted above, the test results are maintained as part of the record of the loop conversion activity.

Finally, Qwest would like to address an allegation in Mr. Stemple's e-mail to Senator McCain. Mr. Stemple alleges that on July 23 "the management in my center removed all visible reference to what we call MLT testing from bannerboards and team checklists that could be observed by the regulators." Mr. Stemple presumably is referring to employee performance information that addresses whether employee teams are conducting provisioning-related tests as required. More specifically, the QCCC has four provisioning teams that engage in MLT testing in addition to their other duties. The QCCC posts information on a chart-board for each team that includes pages with information on the percentage of time that teams have completed particular tests required in the course of the loop conversion process, including the 48 hour check and the MLT test, as well as other information relevant to the teams' performance of their duties. This is the only signage in the QCCC referencing MLT testing. (The pages do not include test result data from the tests themselves. They track only whether the tests were preformed at all.)

Upon arriving at the QCCC for the May 15 site visit, Nancy Lubamersky, a Senior Director of Qwest's 271 team, noticed the pages referencing MLT testing on the chart-boards and asked that they be removed. She did this not to hide the fact that the QCCC was conducting MLT testing, but because she did not want to trigger a discussion about unrelated technical and policy issues regarding pre-order MLT that she was not prepared to address that day. Ms. Lubamersky has been involved in telecommunications regulatory issues for more than twenty years, and she has a well-deserved reputation for honesty and integrity. It is a source of great pride to Ms. Lubamersky to be able to respond thoroughly to every single question asked by a regulator. In this instance, because she would not be able to respond to potential MLT questions, she asked that the pages referencing MLT testing be taken down. This was a judgment that Ms. Lubamersky greatly regrets. However, it did not reflect any intention to change the operation of the QCCC or mislead regulators. Unfortunately, this initial lapse was repeated during the June 5 FCC visit. Pages referencing MLT test completion were posted on the chart-boards during the July 23 visit although without the MLT label. MLT information was posted and labeled during the September 27 FCC visit.

This background provides important context for the July 25, 2002 e-mail from Mary Pat Cheshier, the Director of Operations of the QCCC, which is attached to Mr. Stemple's

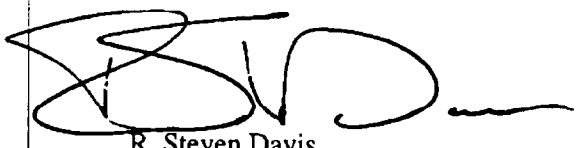
declaration. Because the references on the chart-boards to the MLT tests had been removed before the first visits, some employees of the QCCC questioned whether there was something wrong with them performing the tests. Ms. Cheshier's e-mail is merely an attempt to clarify for employees that there was nothing improper with performing the MLT tests, and give her imperfect understanding of why the references had been removed. Taken out of context, the e-mail is unfortunately worded, but it was an attempt to explain the truth – that there is absolutely nothing wrong with the MLT testing that is conducted at the QCCC.

There is one thing that both Ms. Lubamersky and Ms. Cheshier remember vividly. When she asked that the MLT references be taken down, Ms. Lubamersky told Ms. Cheshier that she was not telling her to deviate from normal procedures during the visit. They both remember that Ms. Cheshier's responded that even if Ms. Lubamersky told her to, she would not instruct her people to change what they do just because a regulator is visiting.

In short, the only one of Mr. Stemple's accusations that is factually correct is that information on MLT testing was removed from the chart-boards before certain site visits to the QCCC by regulators. This action, while ill advised, was the result of a lapse in judgment by a Qwest employee. No changes were made to Qwest practices or procedures, and employees were instructed to perform their work in the normal manner during the visit and demonstration. Mr. Stemple and AT&T have not -- as indeed they cannot -- demonstrate otherwise. Indeed, the MLT test and repair activity benefits CLECs.

Finally, and most important, none of these matters should obscure the fundamental fact that Qwest is meeting the statutory requirements of Section 271. Indeed, the activities of the QCCC demonstrate the lengths to which Qwest has gone to meet CLEC needs. AT&T is trying to create a smokescreen through the allegations of a terminated employee with no knowledge of the facts and circumstances to which he speaks. Our reply comments and associated declarations will address this matter further. But none of this is relevant to our application to obtain authority to compete with AT&T in the interexchange market.

Sincerely,



R. Steven Davis